

*Citation for published version:*

Howard, N & O'Connell Davidson, J (eds) 2015, *Beyond Trafficking and Slavery Short Course: Migration and Mobility*. vol. 5, Open Democracy. <<http://hdl.handle.net/1814/38807>>

*Publication date:*

2015

*Document Version*

Publisher's PDF, also known as Version of record

[Link to publication](#)

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# Migration and Mobility

Beyond Trafficking and Slavery Short Course | Volume 5



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*Edited by Julia O'Connell Davidson and Neil Howard*

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ISBN: 978-0-9970507-4-5

Publication design by Cameron Thibos

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# Migration and Mobility

Beyond Trafficking and Slavery Short Course  
Volume Five

Edited by Julia O'Connell Davidson and Neil Howard

## Beyond Trafficking and Slavery Supporters



Julia O'Connell Davidson gratefully acknowledges the Leverhulme Trust for the award of a Major Research Fellowship (MRF-2012-085), which allowed her to work on this volume.

## About Beyond Trafficking and Slavery

A wide range of activists, academics, trade unions, governments and NGOs are currently trying to understand and address forced labour, trafficking and slavery. *Beyond Trafficking and Slavery* (BTS) occupies a unique position within this larger movement, one which combines the rigour of academic scholarship with the clarity of journalism and the immediacy of political activism. It is an independent, not-for-profit marketplace of ideas that uses evidence-based advocacy to tackle the political, economic, and social root causes of global exploitation, vulnerability and forced labour. It provides original analysis and specialised knowledge on these issues to take public understanding beyond the sensationalism of many mainstream media depictions. It further works to bring citizens, activists, scholars and policy-makers into conversation with each other to imagine pioneering policy responses.

BTS is housed within [openDemocracy](#), a UK-based digital commons with an annual readership of over nine million. OpenDemocracy is committed to filling gaps in global media coverage, helping alternative views and perspectives find their voices, and converting trailblazing thinking into lasting, meaningful change.



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## On freedom and (im)mobility: how states create vulnerability by controlling human movement

*Beyond Slavery* editors introduce their volume on trafficking, smuggling and migration, arguing that mobility is central to life and that state restrictions on movement are the true threat to human wellbeing.

Julia O'Connell Davidson and Neil Howard

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Mobility is widely understood as integral to human freedom, so much so that when injury, illness, or old age restrict our capacity to move we are commonly referred to as 'dis-abled'. This is also what makes imprisonment, or even house arrest, such a profound and terrifying punishment. Whether nipping to the shops, commuting for work, or travelling for leisure, mobility is and always has been an essential part of humankind's economic, social, cultural, and political life. To be able to move freely is a *good*. Yet in an unjust world, it is also an unearned and unequally distributed privilege.

Historically, the mobility of those who lack social and political power has been heavily restricted by those who don't. Slaves, servants, the poor, women, children—all these groups have had their mobility, at one point or another, restricted by those in power. The reasons why are obvious: the freedom to move allows the subordinate a chance to escape from domination, to evade control, or to subvert the social order. Controlling mobility *is* controlling people.

Modern liberal states are no less keen to exercise this control than their illiberal forbears. Across the west, governments routinely criminalise the homeless, tie domestic workers [to their employers](#), and force families on welfare to move to where the housing is cheaper. These are all policies to discipline 'undesirable' populations, and to subordinate them to the dominant social, cultural, economic, and racial orders.

Nowhere is the naked injustice of all this made clearer than in contemporary immigration policies. Wealthy states literally [sell citizenship](#) to the highest and richest foreign bidders, while spending billions to keep the poor and the unwanted at bay. As we have [saw throughout the year](#) in the Mediterranean, and as we are continuing to see throughout Europe's ongoing refugee crisis, this comes at an immense cost to human life. These deaths are no anomaly. The International Organisation for Migration has [estimated](#) that more than 40,000 people died between 2000 and 2013 in the course of 'irregular' crossings around the world, including 22,000 at the borders of the EU. Under any other circumstances, this would be called a crime against humanity.

Importantly, the violence that states visit on would-be immigrants does not stop at the border. Those who survive hazardous journeys, or who become 'illegal' as a result of overstaying visas, failing in asylum claims, or simply failing to navigate Kafkaesque bureaucracies, often find themselves in situations that echo features of historical enslavement. Stripped of their rights, they are held in for-profit immigration detention centres, violently coerced across borders during deportation, and forcibly separated from their family and loved ones.

For those 'lucky' individuals who do manage to evade the authorities and enter the West, and even for those who acquire work visas and arrive through legal channels, what awaits is often a life of exclusion and exploitation in the most abusive sectors of the economy. They are frequently denied or prevented from accessing basic social protection. If their presence is illegalised, they are forbidden from contributing to the economy. And if present legally, their work visas frequently deny them freedom of movement within the labour market. As such, they can be driven into capital's ever-needy reserve army of labour.

All of this is [hidden](#) by mainstream political discourse around 'human trafficking' and 'migrant smuggling'. 'Smuggling', we are told, is voluntary and consensual; 'trafficking' is the coerced equivalent of transat-

lantic slavery. Yet both terms are used interchangeably, with politicians leaping to blame ‘the smugglers’ who ‘traffic in misery’ whenever bodies wash up on shore or are found [decomposing in the desert](#).

Why is this? It is precisely in order to hide their complicity in the border deaths that shame our age, and so that they can de-politicise debates around lethal controls on human movement. The ‘smuggling-trafficking’ frame allows those who move to be seen either as vulnerable to traffickers or at the risk of smuggling, in turn legitimating the replacement of ‘protecting people’ with ‘preventing their movement’ or ‘sending them back home’ once they’ve moved. It is this discourse, after all, that justified [EU proposals for military action to smash smuggling networks in Libya](#).

The essays we feature in this volume will counter dominant ideas about trafficking, smuggling, and migration. It will begin with the premise that mobility is integral to human life and flourishing, and will argue that state restrictions on the freedom of movement are the true threat to human wellbeing.

Our first group of essays puts this threat into historical and theoretical context. Laura Brace opens the discussion by examining the dialectic between mobility and immobility during the period of European colonial expansion, and argues persuasively that the liberty of the ‘free’ required the immobility of their opposite—the subordinate. Patrizia Testai and Julija Sardelić examine the ways in which the totalitarian states of yesteryear controlled and constructed people through mobility regimes, and they reflect on the continuing legacies of this control today. A key theme in their articles is the *productivity* of mobility controls, which is driven home by the final two essays in this group, by Harald Bauder and Nicholas De Genova. Bauder examines how the unequal distribution of the right to move is everywhere integral to the creation and segmentation of capitalist labour markets, while De Genova explores the way state power itself is constituted by the

performativity of borders and deportation.

Our second group of essays moves on to examine the *lived consequences* of the deployment of this state power in the governance of human movement. These consequences are so grave and at times so brutal that we have no fewer than nine different authors examining as many different cases. Roxanne Lynn Doty, Lucy Williams, Rhian Benyon, Roda Madziva, Stephanie Silverman, Kirsten Han, Mark Johnson, Letizia Palumbo and Alessandra Sciurba all show how (im)mobility policies destroy family life, prevent torture survivors from reaching safety, render migrant workers vulnerable to exploitation, and demean destitute asylum seekers.

Our third group of essays attacks the single major discourse responsible for *hiding* all this injustice—that of human trafficking. Edlie Wong, Julia O’Connell Davidson, Luke de Noronha, Lucrecia Rubio-Grundell, Kyungee Kook, Inka Stock, Lyndsey Beutin and Sverre Molland all question the meaning and utility of the concepts of ‘trafficking’ and ‘smuggling’, laying bare the gulf between the rhetoric surrounding these concepts and the lived realities of the people labeled by them.

Lastly, in our fourth and final group of essays, we point to the moral and practical imperative of an alternative future that lies *beyond* borders. The Alarm Phone’s piece, ‘Ferries not Frontex!’, shows why policies that *facilitate* mobility would be an altogether better response to migrant deaths in the Mediterranean, while Joseph Carens and Antoine Pécoud make the case for a world with fully free movement. This case is one that features far too infrequently in campaigns against migrant deaths, ‘human trafficking’ or ‘modern slavery’. But it is absolutely essential, and should be endorsed by anyone who is genuinely concerned to see greater freedom in the contemporary world.





## **Section one**

The state construction  
of (im)mobility



## Overcoming space: mobility and history

*Mobility is integral to human life, but not all mobility is treated as equivalent. What happens to those who are unable to move away from wilderness and into history?*

Laura Brace

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We are all ‘mobile individuals’ living in a world that has been structured by mobility. As political theorist [Thomas Hobbes argued in the seventeenth century](#), we are matter in motion. That motion, the restlessness that ceases only in death, tells us that we are alive and human. Mobility itself is understood as a human good, a positive value and a general principle of modernity. The liberal possibility that we are free to pursue our own good involves choosing our own path. It suggests we can change the story of our lives by moving its location, altering the supporting cast of characters and giving ourselves new opportunities, opening up new horizons. In this context, mobility is understood as increasing personal freedom and widening opportunities, and it is inextricably linked to the idea of modernity as progress. Mobility allows us to break away from tradition, to accelerate social change and to become civilised. In its connection with civilisation, mobility emerges from this historical context as a relational concept. The mobility of some relies on the immobility of others.

This relation between mobility and immobility helped structure colonialism. Settler colonies were not primarily established to extract surplus value from indigenous labour, but to displace indigenous people from the land. This meant that settler colonies were premised on the elimination of native societies—[the colonisers came to stay](#). Early liberal theorists like John Locke held that this was justifiable in the Americas. Although the indigenous people lived on fertile land capable of producing food and other resources in abundance, he argued, they had put themselves outside the current of history by failing to

realise the potential value of what they had. By clinging to tradition they remained outside market society, with no hope of commerce with the rest of the world. They had made themselves immobile. As a result, [Locke said](#), 'A King of a large and fruitful Territory there feeds, lodges, and is clad worse than a day labourer in *England*'.

The English colonists based their claim to virtuous ownership on agricultural plantation and cultivation, growing sugar in Barbados and tobacco in New England. They put up fences and rooted themselves in the soil in ways that suggested immobility, but the new crops they brought, the towns they established to trade with England, and their commerce with the rest of the world were all about expansion and appropriation and so about mobility, modernity, and progress. Their sense of mission meant that they felt they had God's authority to enclose the 'vacant lands' of America. They used the English courts to command the Americans to fence their land. When they did not do so, the settlers regarded the land as being actively neglected. The Indians may have occupied the land, but they had failed to fulfil God's commandment to subdue the earth.

Be fruitful, and multiply, and replenish the earth, and subdue it: and have dominion over the fish of the sea, and over the fowl of the air, and over every living thing that moveth upon the earth. —Genesis 1:28

Instead, they had left the grass to rot and the fruit unpicked, and their land could still be looked upon as waste. They were seen as immobilised by their inability to get beyond subsistence. Their "dependence on the spontaneous productions of nature to supply almost all their wants", [Ronald Takaki observes](#), allowed settlers to imagine indigenous peoples as 'wild' beings, suspended in a state of nature.

Through seventeenth century European eyes, the indigenous Americans were conceived as immobile because they failed to use their

minds to expand their horizons beyond the ordinary wants of the body: fishing, hunting, dancing, and revenge. Locke's understanding of the Indians as savage was based on his conviction that they were unable to extend their thoughts through literacy and conversation, so that their minds could not attain a 'comprehensive enlargement'. They had the potential to exercise reason, but to "achieve sufficient moral sophistication one needed to enter a polite and civil world", as [Daniel Carey puts it](#). English men, by contrast, were seen as living in a superior society where they could pursue their desires and engage in international exchange. They could travel, leaving their civilised worlds to investigate the customs, inclinations, beliefs, and habits of others, to study the Indians and their environment, to cultivate their own worldliness.

Within this structure of thought, in the beginning all the world was America. The peoples Locke found there '[show us our history](#)'. By constructing the Native Americans as wild and primitive, as yet unaware of the value of private property and of God's grand design for the earth, Locke placed them in the past. Once there, they could be subjected to a narrative in which their current practices would—inexorably—be transformed into those of Europe. In this sense, America appears at the beginning of history, not yet fully distinguished from nature. The inhabitants' inability to progress would have to change, but their mobility would have to be regulated by the politeness and civilisation of European society. As Georg Hegel later argued about Africa in the *Philosophy of History*, there are some "[strange places that are located in the world but not in history](#)". Such places remain as states of nature: unhistorical, immobile in time as well as space.

The historical immobility of the indigenous populations of America and Africa underpins what [Frank B. Wilderson](#) identifies as the "black invisibility and namelessness" at the heart of slavery. Immobilising certain people so that others can travel means placing restrictions on some people's agency, denying them the possibility of being protagon-

nists and of generating their own historical categories of entitlement and sovereignty. '*We are off the record*', says Wilderson of black Americans, 'We live in the world, but exist outside of civil society'. Something about this distinction, it seems to me, helps to explain the disturbing ambivalence of current reactions to the **drowning** of mobile African individuals in the Mediterranean. It has made it possible for the British government and the EU to lament the tragedy for the world while withdrawing search and rescue operations in order to protect their own civil societies.

## The border spectacle of migrant ‘victimisation’

*There’s nothing self-evident about ‘illegal’ migration. When borders become a spectacle of migrant deaths, discourses of ‘victimisation’ by ‘smugglers’ distract us from the real causes of migrant illegalisation.*

Nicholas De Genova

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We are led to believe that there is something self-evident and straightforward about migrant ‘illegality’. Some migrants are categorised as ‘illegal’ because they have presumably violated ‘the Law’. Yet in most depictions of these migrants, there is little if any account of what the law truly is, or of how it came to be so. The law, after all, has a history, and it is a deeply politicised history of deliberate and more or less calculated interventions. As such, it is impossible to contemplate the real social and political condition of migrants outside of the larger contexts that produce specific predicaments of ‘illegality’.

Migrants only become ‘illegal’ when legislative or enforcement-based measures render particular migrations or types of migration ‘illegal’—or in other words, *illegalise* them. From this standpoint, there are not really ‘illegal’ migrants so much as *illegalised* migrants. The real origins of such illegalisations are to be found in the deliberations, debates, and decisions of lawmakers. The law that illegalises migrants remains largely invisible, while the spectre of the devious and cunning migrant becomes hyper-visible through mass media representations of border policing. This is what I have described in my book *Working the Boundaries* as a spectacle of *enforcement* at ‘the border’, whereby migrant ‘illegality’ is rendered spectacularly visible.

The Border Spectacle sets a *scene* that appears to be all about ‘exclusion’, where allegedly ‘unwanted’ or ‘undesirable’—and in any case, ‘unqualified’ or ‘ineligible’—migrants must be stopped, kept out, and turned around. At the same time, the border appears to demonstrate,

verify, and legitimate the purported naturalness and putative necessity of such exclusion. The concrete practices of border policing interweave with this sort of language and imagery to turn migrant ‘illegality’ into a seemingly ‘real’ thing.

This scene of exclusion is nevertheless always accompanied by its shadowy, publicly unacknowledged or disavowed, *obscene* supplement: the large-scale recruitment of illegalised migrants as legally vulnerable, precarious, and thus tractable labour. In the face of increasingly fortified, militarised, and securitised borders, those who elude detection and evade apprehension are rewarded with the protracted and indefinite social condition called ‘illegality’ and all its attendant deprivations.

Above all, migrant ‘illegality’ is accompanied by *deportability*: the possibility of being forcibly removed from the space of the state. It is this grim prospect of coercive expulsion that characterises their labour power. Extraordinarily vulnerable workers living in permanent fear of the law are, after all, very lucrative for employers. The exclusionary brashness of the Border Spectacle, then, is inseparable from its obscene underbelly: the real social relation of illegalised migrants to the state, and the secret of their abject inclusion as ‘illegal’ labour.

### Obscene inclusion

The Border Spectacle, as we have seen, conjures up the image of migrants’ transgression of borders. It works its magic trick of displacing ‘illegality’ from its point of production—the processes of lawmaking—to the so-called ‘scene of the crime’. This, of course, doubles as the scene of ostensible crime fighting, a key part of making the border a preeminent scene of exclusion. Human mobility nevertheless prevails. This happens despite the accumulated pressure and violence inflicted at borders, zones which are increasingly intruding into the ‘interior’ of the nation-state’s space and the everyday lives of both migrants and citizens. These dynamics that illegalise migrants and produce the conditions for their exploitation are what I call their obscene *inclusion*.

Obscenity is less about concealment than selective exposure. Even as the state's lawmaking produces migrant 'illegality' as an enduring 'problem,' spectacles of border policing nonetheless reaffirm the existence of a subordinate reserve army of deportable labour ready and available *within* the space of the nation-state. In this way, the Border Spectacle appears to show the state's diligent but ever-beleaguered 'response' to the phantom 'crisis' of border invasion by desperate hordes of 'illegal' migrants and asylum-seekers. The nightmarish invasiveness, relentlessness, and ubiquity of 'illegal' migration then serves to summon forth ever more intense and expansive intrusions of state power into everyday life for everyone.

The related discourses of 'human trafficking' and 'migrant smuggling' further allow the state to fashion itself as a paternalistic (indeed, patriarchal) "protection racket", to use Charles Tilly's term. In these instances, the state's 'protection' is benevolently extended beyond its 'rightful' citizens to include some migrants, particularly women purportedly rescued from the intrinsic criminal excesses of 'illegal' migration itself. The 'trafficking' discourse thus narrowly identifies the source of the migrants' 'exploitation' as a 'foreign' one—'smugglers,' and the whole 'opportunistic' infrastructure of 'illegal' migration itself. In this way, illegalised migrants are deemed to be in need of 'protection'—from one another!

Almost never do such discourses interrogate the larger border and immigration regimes creating the need for precarious and vulnerable forms of 'illegal' border crossing, and consequently broadening the space to exploit migrants and asylum-seekers. At the same time, the exposure of pitiful and helpless 'victims' of 'migrant smuggling' nonetheless verifies the existence of a shadowy population of docile and infinitely tractable migrant denizens. In this respect, we see again how the Border Spectacle—as a scene of exclusion—affirms the obscene fact of a kind of *subordinate* inclusion. The sanctimonious but fundamentally hypocritical discourses decrying 'migrant smuggling' and

'human trafficking' serve as premier examples of the Border Spectacle's acts of obscenity, exposing its own 'dirty secret'.

### Essentialised exploitability

The representation of migrants as either 'victims' or opportunistic 'criminals' effectively erases the kind of agency that might count as self-determination. The disqualification of these illegalised migrants from the capacity for self-determination furthermore implies that they are incompetent for self-government and democratic citizenship. This framing effectively reduces the exploitation of 'illegal' migrations to little more than a verification of their exploitability: their subjugation merely seems to prove their essential slavishness. This transposes the politics of citizenship and the inequalities of immigration into an essentialist politics of 'difference' that appears to arise from the migrants' 'foreignness'.

The unequal politics of citizenship, which is institutionalised in immigration law, produces migrant 'illegality'. The Border Spectacle systematically re-renders that same 'illegality' into a quasi-inherent deficiency of the migrants themselves. This displacement of juridical inequalities and border injustices onto the illegalised migrants themselves—including patronising discourses that present migrants as purely passive 'victims'—inevitably contributes to the migrants' *racialisation*.



## Illegalised migrants and temporary foreign workers: the international segmentation of labour

*Labour markets are segmented, and the vulnerability at the bottom underpins the stability and benefit at the top. States use migration controls to maintain the docility of the bottom rung.*

Harald Bauder

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The collapse of an eight-story garment factory in Bangladesh in April 2013 killed more than 1,000 workers and injured 2,500 more, shocking the world and drawing global attention to the horrific working conditions and lack of safety standards that exist in the global south. Two years earlier, the [death of ten overworked temporary migrant workers](#) in a car crash in Canada raised public awareness of the exploitative working conditions that these migrants endure. Although the settings for these two events could not have been more different—Bangladesh is one of the poorest countries in the world and Canada is one of the wealthiest—they both reflect an international segmentation of labour that characterises a global economy feeding off the vulnerabilities of ‘third world’ labour.

Industrialised economies have long been dependent on the labour that international migrants provide. Migrant workers are attractive to many employers precisely because they are vulnerable: the denial of their rights, status, and citizenship prospects leaves them open to various types of exploitation (e.g. lower wages). Governments are complicit in this strategy, and as an increasing number of people migrate to Europe, North America, and other wealthy countries to escape poverty and exploitation, governments are devising ways to maintain these migrants’ vulnerability.

Temporary foreign worker programmes deny migrants the opportunity to stay in the country and become citizens. In Canada, a country of

35 million, the number of temporary foreign workers has skyrocketed to about half a million, and now exceeds the number of permanent immigrants. These workers tend to be highly vulnerable, because many of them are only permitted to work for one particular employer and dismissal can result in deportation.

The most vulnerable and exploitable workers, however, are illegalised migrants who do not possess the government's authorisation to be in the country and thus lack government protection from abuse. Using the term **illegalised migrant**—rather than undocumented, irregular, non-status, or 'illegal'—draws attention to the laws and practices, established by governments, that deny these migrants legal rights. Researchers estimate that **more than 10 million illegalised migrants live in the USA alone**.

In wealthy economies, temporary foreign workers and illegalised migrants constitute a segment below the existing labour market. In this segment, employers get away with paying below-standard wages, neglecting labour safety regulations, and abusing workers. Workers risk deportation whenever they resist their unfair treatment. They are therefore left with little choice but to endure these conditions.

Many people believe that labour markets treat all workers fairly based on their merit, capacities, and preferences, and that labour markets operate best when governments do not interfere. Actual practice, however, is very different. Research shows that labour markets are in fact organised into hierarchical segments, which not only offer very different pay and working conditions but also apply different rules of engagement and labour practices. In the top segment are high-paying and secure jobs with substantial career development opportunities. Individual workers in this segment possess considerable clout in negotiating their terms of employment. At the opposite end of the spectrum sit the most vulnerable and exploitable workers, who receive little pay, few benefits, experience a high level of employment insecurity, and are



Apparel Factory in Dhaka. NYU Stern BHR/Flickr. Creative Commons.

the ones fired first when employers are struggling. In short, they are disposable. They serve to absorb the shocks of business fluctuations, thereby enabling privileged workers in upper segments of the labour market to enjoy greater job stability.

Segmented labour markets are not an academic construct, but the harsh reality that millions of workers confront every day. In my book *Labor Movement*, I showed how various mechanisms interact to devalue migrant labour, disproportionately allocating them to the bottom segment of the labour market. Blatant racial discrimination is obvious, however more subtle but equally effective ways of disadvantaging migrants exist on the basis of their foreign credentials, accents, and behaviours that seem alien to employers and customers.

Since publishing this book almost a decade ago, I noticed that governments are intensifying their efforts to create a vulnerable and exploitable labour force by denying migrants their rights and the prospect of citizenship. In particular, temporary foreign worker programmes and

the illegalisation of migrants are these governments' preferred mechanisms of devaluing migrant labour.

Europe, the United States, and other wealthy regions are closing their external borders to migrants and tightening their refugee laws and policies. Migrants who cross the border without the government's authorisation, or who remain in the country although their refugee claims were rejected, are thereby being increasingly illegalised, putting them in extremely vulnerable positions. Canada, which is sheltered geographically from 'unauthorised' migration, relies more heavily on its temporary foreign worker programmes to create a docile and exploitable labour force at the bottom of the labour market. Many of these foreign workers integrate into their local communities, make friends, and see the future of their children in Canada. Some of them decide to stay beyond the expiration of their visa or permit. They too become illegalised.

The use of temporary foreign workers and illegalised migrant labour changes the geographical structure of global inequality but does not alleviate it. Global corporations may exploit the vulnerable situation of workers in places like Bangladesh, Indonesia, or Mexico to cheaply produce garments, electronics, and other consumer goods. When these workers migrate to North America, Europe, or the Persian Gulf to escape the poverty, exploitation, and inhuman conditions in their countries of origin, they are systematically exploited in these countries as foreign workers or illegalised migrants. In this way, restrictive migration policies and practices only reproduce an international segmentation of labour within the industrialised economies.

## Fascist legacies: Italy's approach to mobility and mobile labour

*Italy abolished Mussolini-era laws restricting internal mobility in the 1960s, yet troubling continuities exist between these regulations and current efforts to control Italy's migrant population.*

Patrizia Testai

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Italy's legal and policy approach to immigration is widely seen as a relatively recent improvisation by a state adjusting to the country's new status as a migrant-receiving area. And yet Italy's history of labour mobility stretches back to pre-unitary years, and includes both spectacular outward movements across Europe and continents as well as micro and macro [internal movements](#) of populations from the impoverished countryside and the country's southern area. This article intends to reconnect the country's present approach to mobility to its past history of internal migration. In doing this, it will highlight specific elements of continuity in particular with fascist rules and practices over internal labour mobility.

The Italian state has endeavoured to control its highly mobile population ever since its creation in 1861. In doing so, it produced a range of marginal subjects that were later condensed into the figure of the 'southern emigrant'. One such mechanism of control linked residence to work contracts. During the 1920s and 1930s, the fascist regime set up a complex system of labour institutions and [population registry offices](#). These served to establish a dividing line between local and 'foreign' workers, namely those who formally enjoyed Italian citizenship but who had moved from impoverished rural areas to the cities. Only workers officially resident and enrolled in the fascist union were allowed to be regularly employed under this system. The rest were encouraged to establish rural communities within the national territory and work the fields and marshlands there. Behind the fascist rheto-

ric about ruralising Italy, such measures sought to address what was perceived as a more pressing problem: the need to protect the urban middle class from poor immigrants, who were considered as parasites living in idleness and spreading corruption.

This administrative solution to internal mobility [did not make Italians less mobile](#), but local administrators' fiddling with unemployment lists allowed for the creation of a pool of irregular cheap labour recruited in seasonal work and other exploitative sectors. The refusal to grant legal domicile to these workers made them all the more marginal as their access to health services and social housing depended on their enrolment in municipal registries.

[Mussolini's anti-urban law](#) of 1939 proved very useful for post-war reconstruction. It was, in fact, applied by Republican Italy up to 1961, creating within cities enclaves of exploitable workers and, more generally, a 'flexible' industrialisation through the use of the irregular employment of non-residents. This system linking work and residence was applied in the context of marked inequalities between an industrial north and a poor south, inequalities that underpinned the large-scale movements from south to north. It also formed the legal and institutional framework and provided the policy vocabulary that would shape future immigration policies and approaches towards new migrants coming from outside Europe.

The rules that, from the 1960s onward, began to regulate immigration flows were not made in a vacuum. They followed a well-established pattern in which migrant people, relegated to the margins of any form of social citizenship, were treated exclusively as workers. The evolution of Italian immigration policy shows a constant preoccupation with limiting entries and refusing migrants the rights afforded by Italian workers, even though by the 1980s it was clear that migrant workers were becoming a structural component of the Italian labour market. It was not until 1990 that Italy recognised basic health and social rights

for migrant workers, and the possibility of asylum for non-EU citizens. Italy's first coherent law on immigration, [Consolidated Act n. 40 of 1998](#), was a compromise born out of leftist and Catholic efforts to balance immigration control with social integration principles. This resulted in an uneasy mixture of entry quotas, new detention centres, and humanitarian provisions to protect and assist victims of trafficking. The last of these often translated into paternalistic rehabilitation programmes to redeem street prostitutes.

The act also attempted to loosen the link between entry and labour recruitment from abroad through the introduction of a sponsor figure, who would guarantee a prospective migrant's board and lodging while they searched for work. However, this provision was abolished in 2002 under Law n. 189 (the so-called [Bossi-Fini law](#)), and the balance between migrants' rights and immigration control began to tilt once again towards the latter. The emphasis was now on patrolling borders and the forced return of unauthorised migrants. Moreover, bilateral agreements with third countries—especially with Libya in 2003 and 2007—sought to establish an external system of border control (including, in the case of Libya, the financing of detention centres there). The Bossi-Fini law also made visa rules for entry more restrictive than ever and tied entry more securely to a work contract through the so-called 'contratto di soggiorno' (residence contract).

By 2009 the circle was closed with the passing of a series of decrees forming the '[security package](#)'. The old system of internal controls was back. Full powers were granted to mayors on matters of security, including the power to refuse the enrolment of certain citizens in municipal registries. The system of immigration control—tight visa entries combined with a link between a work contract and the right to stay—could now be reinforced with administrative rules aimed at controlling migrants' mobility inside Italy and excluding them from social rights and services. The separating line between immigration management and migrant rights policies, which previous centre-left

coalition governments had tried to maintain in principle if not in practice, was now completely dissolved. Migrants who enter the national territory for the first time are now requested to sign an ‘integration agreement’ ([Accordo di Integrazione](#)) with the state to show that they are committed to respect and learn Italian civic norms, culture, and language if they want to stay in the country.

Just as Mussolini’s anti-urban laws had marked immigrants as a troublesome source of disorder, and just as southern workers had been excluded from protection as workers and from rights as citizens during post-war reconstruction, so mayors can now limit the right of residence to specific individuals deemed ‘undesirable’. These individuals are the various *extra-comunitari* (non-EU citizens), *neo-comunitari* (new EU citizens, in particular Romanians and Bulgarians), and the numerous refugees and asylum seekers who, after the North African crisis and consequent ‘emergency’ reception policy, have come to form a complex constellation of differently excluded citizens within contemporary Italian society.

The militarised reception structures consolidated inside the Centri Polifunzionali, include: reception centres for refugees and asylum seekers, temporary reception centres for other migrants, and centres for identification and expulsion. Alongside these are the various shelters for victims of trafficking and reception centres for unaccompanied migrant children. In effect the Centri Polifunzionali is a centralised depot where a variety of migrant groups are made invisible and controllable. The same migrants are, at the same time, used as an army of cheap workers in agriculture, in private households, and other sectors, labouring to keep Italy’s slack economy going.

Mussolini’s anti-urban law was abolished in 1961 following the joint role of a strong labour movement and of the Communist Party. Yet, the Duce would be proud to learn that it never stops [inspiring Italian rulers](#) in creating a class of non-resident exploitable workers.



## Rethinking (im)mobilities of Roma in Europe

*Roma are wrongly assumed to have a cultural predilection to move. Most Roma do not migrate, and many of their largest movements have been forced upon them.*

Julija Sardelić

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In recent months there has been a great deal of discussion about forced migration and the distinction between who is a refugee and who is an economic migrant. In the case of people fleeing from Syria, the media discourse has changed significantly: many news outlets now refer to them exclusively as refugees. Yet while this is an important change, it has latently reinforced the dominant dichotomy of refugees, who ‘legitimately’ seek protection, and ‘undeserving economic migrants’, who do not since they are presumably mobile ‘by choice’. European Roma, who are often portrayed as social benefit tourists in the media, have long served as a stereotypical example of the undeserving economic migrant. However, much like those crossing the Mediterranean now, the degree to which the movement of European Roma has been ‘free’ is open to debate.

### Fear of invasion

The Free Movement of EU Citizens Directive ([Directive 2004/38/EC](#)) came into force on 30 April 2004, one day before the so-called ‘Big Bang EU Enlargement’ that created ten new EU member states from mostly post-socialist candidate countries. This directive permits all EU citizens to move to and reside in member states other than their own for up to three months. However, over the past decade—particularly after Romania and Bulgaria joined the EU in 2007—we have witnessed heated media and political debates on whether this right should remain unconditional. The primary impetus for this discord has been the position of Romani EU citizens, who move freely between their own post-socialist country (usually Romania) and countries in West-

ern Europe (e.g. France, Italy, Spain, and the UK).

The issue of 'Romani mobilities' has been framed by three popular beliefs. First, Roma are presumed to have a 'nomadic' culture. Second, the mobility of Roma in socialist states was stopped or severely restrained by the local and state authorities. Third, now that those restraints on mobility have been removed—a result of the fall of the Iron Curtain, as well as the 2004 and 2007 EU enlargements—Roma have resumed their 'traditional' movement. Some believe that this will eventually result in mass migration to Western Europe with Romani migrants 'stealing' jobs and taking advantage of social welfare programmes. Although the fear of 'West Romani invasion' was proven to be unfounded, the myth that it might happen in the future fuels many popular media broadcasts such as the British reality show 'The Romanians are coming'.

### Mobile, but not of their own volition

This empirical reality forces us to not only ask why the free mobility debate revolves around Roma, who are EU citizens, but also why Roma are assumed to be more mobile than other populations. Indeed, history shows that the movement of Roma is more a product of their treatment at the hands of different authorities than of culture, and it is an open question whether they would be mobile if contemporary and historical contexts had been different.

Roma were viewed as bad omens in many folk cultures during the Ottoman period, especially during times of war. When a group of Roma was seen coming to a village, it was said, the Ottoman army could not be far behind. Authorities dealt differently with these 'Roma nomads'. The city of Bamberg (now in Germany) was recorded as paying them a certain amount of money to leave in 1463, while a decree issued in 1697 in what is today's Slovakia declared all Roma to be outlaws and instructed the authorities to expel or hang them.

Ironically, the mobility of Roma actually reached its peak during the second world war, in which many Roma suffered the same fate as Jews. Romani survivors that I met in different states of the former Yugoslavia told me stories of Romani settlements and villages that were almost completely emptied. Up to 90 percent of the Romani population in many countries disappeared, taken out of their settlements and either massacred on the spot or shipped by train to Auschwitz-Birkenau, Jasenovac, and other concentration camps. For most, this meant inevitable death. Ironically, such periods of forced, brutal mobility inflicted upon Roma by others in Europe do not attract much attention.

Moreover, it is well known that the authorities of the socialist governments curtailed the movement rights of Roma in the post-war period. What is less known is that prior to this, the authorities relocated large numbers of Roma so that they would not be concentrated in one place. For example, most of the Roma in the nominally socialist Czechoslovakia lived in the Slovak part since those residing on Czech lands were killed during the war. Many of these were relocated from the former to the latter to man the factories being built in Czech areas, yet remained registered as republican citizens of Slovakia. After the dissolution of Czechoslovakia, this 'geographical mobility' (conducted by the state authorities) was the main reason why around 25,000 Roma living in the Czech Republic had difficulties accessing Czech citizenship and were rendered *de facto* stateless.

### Various patterns of Romani (im)mobilities

While these examples demonstrate that governments directly or indirectly caused many of the largest movements of Roma in history, it is also apparent that the contemporary treatment of Roma by state authorities continues to push them to move. Here we can think of the eviction and resettlement of Roma communities in several west European states, or be reminded of Roma and other Romani minorities (Ashkali and Egyptians, for example) who fled states of the former Yugoslavia due to war. Those who left to other parts of Europe were

usually not granted refugee status. They were put under temporary protection, a status that made them eligible for deportation once the violence was declared over.

At the same time, large, seemingly more regular mobilities do not attract much attention. For example, an extremely large proportion of the Romani population in Slovenia commutes on a daily basis to the neighbouring country of Austria. These workers, who are unable to find jobs in Slovenia due to the economic situation and discrimination, are treated as other '*gastarbeiters*' (guestworkers) in Austria. A similar situation exists for the many Bulgarian Roma working as seasonal labourers in Greece.

It must also be noted that not all Roma have the ability to move. In today's Europe, a large number of Romani individuals do not possess basic documents, even birth certificates. This lack of paperwork makes them legally invisible and *de facto* stateless. [Most such individuals lack the resources to be mobile](#), and by most estimates the number of sedentary Roma far outweighs the mobile Romani population.

Why some Roma become migrants is not fully understood. However, there are other, far more urgent questions for which we must demand answers: why do most Roma in Europe, whether migrants or not, remain so immobile on the socio-economic ladder? Why do they exist on the edge of poverty in most societies, and why are they one of the main targets of hate crimes and discrimination? More generally, is it correct to describe only those fleeing war and achieving refugee status as 'forced migrants', or should the old dichotomies of forced and migration by choice be reconceptualised?





## **Section two**

The consequences of mobility controls

## Families in detention

*The United States uses the detention of families and unaccompanied minors as a method of deterring immigration. This must stop.*

Roxanne Lynn Doty

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A [recent report](#) from the Lutheran Immigration and Refugee Service and the Women's Refugee Commission tells the story of 28-year-old Rosa, who fled the gang violence in Honduras with her seven-year-old daughter Ana. They were arrested in New Mexico and put into a family detention centre there for three months. Around this same time, mothers held with their children at another family detention centre in Texas went on [a five-day hunger strike](#) the week before Easter 2015. The stories of these women and their children are among the many stories that have resulted from the United States' renewed practice of detaining immigrant families.

The number of individuals detained in the United States for immigration reasons has increased dramatically over the past few decades, and especially under the Obama administration. This situation stems from the intensified border control efforts and immigration policies that ostensibly aim to reduce mobility along the southern border of the United States. The policies have utterly failed to do so and have, rather, increased the vulnerability of those who cross. Amongst the numerous situations of detention that highlight the inhumanity of the current system is the issue of family detention.

Immigration and Customs Enforcement (ICE) utilises [a network of over 300 detention centres nationwide](#), many of them owned and operated by private corporations. In December of 2014 the largest family detention centre for immigrants opened in Dilley, Texas. At the facility's inauguration, Jeh Johnson, the secretary of the Department of Homeland Security, [said](#) ominously that with the added detention



Otay Detention Center. Nina Robinson for BBC World Service/Flickr.  
Creative Commons.

capability, “It’ll now be more likely that you’ll be detained and sent back”. The centre is a former camp for oilfield workers located 100 miles north of the US–Mexico border, between Laredo and San Antonio. It is designed to hold about 2,400 detainees, most of whom will be women and children. The 50-acre site will be managed by Corrections Corporation of America (CCA), the largest for-profit prison corporation in the United States. CCA describes its mission in Dilley as being “to provide an open, safe environment with residential housing as well as educational opportunities for women and children who are awaiting their due process.” Others [have described the site as](#) “standing on a dirt road lined with cabins in a barren compound enclosed by fencing.”

The event precipitating the recent uptick in what has been referred to as “[Obama’s family deportation mill](#)” was the arrival of the ‘border kids’ during the summer of 2014. Tens of thousands of unaccompanied minors from El Salvador, Guatemala, and Honduras crossed the Mexican border into the United States. While these unaccompanied minors received most of the media attention, there was also a signif-



icant increase in the number of women and children crossing for the same reasons, namely violence in their home countries. The US government apprehended 68,334 family members at the US's southwest border between October 2013 and September 2014. This represents a 361 percent increase from the previous year, according [to the report](#) mentioned in the first paragraph.

Prior to the summer of 2014, ICE maintained only one family detention centre: the 96-bed Berks County Residential Center in Leesport, Pennsylvania, which opened in 2001. From 2006-2009 CAA, under contract with ICE, managed a family detention centre in Taylor, Texas. However, it was shut down after scathing publicity regarding the conditions at the centre led to a human rights investigation and a lawsuit from the American Civil Liberties Union. Two other centres, one in Artesia, New Mexico and one in Karnes County, Texas were opened temporarily to hold families. Prior to opening the new centre in Dilley, Texas family detention, which was a very controversial aspect of the immigrant detention system, had been on the decline.

Etienne Balibar has [written](#) of a “topography of cruelty” in which asylum and migration are central aspects. Borders, key features of this topography, work as instruments of security control, segregation and “unequal access to the means of existence”. Surely, the detention of families, many with very young children, constitutes an extreme form of cruelty? Confining children in compounds behind razor wire is inherently inhumane. The average age of the children held at the Artesia, New Mexico detention centre was six years old. Mental health professional and immigration lawyers [speak](#) of the damage that prolonged detention does to mothers and their children, most of whom have already experienced devastating forms of violence. Surely the United States can do better.

## Slave state: how UK immigration controls create 'slaves'

*British immigration controls are not working and policies stripping rights from large numbers of migrants are creating a 'slave' population.*

Lucy Williams

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The term 'modern slavery' is used to describe the terrible reality of some people's lives, but it is used selectively. Stories of slavery today tend to focus on an 'evil' perpetrator and often offer fetishistic descriptions of bondage while neglecting the processes that allow one group of people to dominate another. Historically, chattel slavery has meant much more than the simple *ownership* of one person by another. To get to the heart of slavery, we must move beyond images of chains and frightened faces and look at how people become victimised and stripped of their humanity.

Slaves are institutionally powerless and perpetually dependent in a capricious world. They are obliged to abide by laws that don't protect or benefit them, existing in a liminal state between a lost social place and new communities and identities. Slaves are 'marked' as different and, as people without rights, [can lawfully be rejected and abused](#). They are not free to make their own choices or work towards their own goals. In declaring many migrants in the UK 'illegal' and '[deportable](#)'—refusing them permission to work, to rent or even to marry—the state has declared them 'unwanted' and without personal rights.

Migrants who have lost or been refused leave to remain in the UK are liable to detention, destitution, and deportation. Many have been living in the UK as students, visitors, workers, and members of settled families but have lost their rights for a variety of reasons. Their visas may have run out or policy changes may have re-branded them as undocumented or irregular. Some may have been asylum seekers refused



People protest the Yarl's Wood detention and immigration removal centre located in Bedfordshire, UK, in August 2015. Darren Johnson for iDJ Photography/Flickr. Creative Commons.

refugee status, or perhaps they have had their temporary protections withdrawn. Some might have been convicted of criminal offences carrying more than a year's sentence which, since 2008, has meant automatic deportation. Some may have lived in the UK for most of their lives, [embedded in communities where they feel, and are accepted as, 'British'.](#) For all of them, a Home Office decision denying further right to remain means that they become effectively banished to the fringes of society.

Many migrants in the UK today experience the restraints on freedom that academics have linked to slavery. They are not 'owned' and they do not necessarily work unrewarded for the gain of others, yet without rights to support themselves legally and with the threat of detention and deportation hanging over them, they are marked as aliens with no chance to belong.

Immigration detention in the UK is administrative—meaning it results

from a bureaucratic rather than a judicial procedure—and indefinite. Drawing on many studies, the recent [All Party Parliamentary Inquiry](#) described the damage detention can inflict on already vulnerable people. Detention is promoted as a means of facilitating deportation but, despite the rhetoric, [recent official figures](#) show that only 53 percent of detainees leave detention for their countries of origin.

Many migrants are released from detention into a British community, put under curfew, and monitored by electronic tag. They must often live at specified addresses and almost all will have to report to Immigration Reporting Centres, from where they can be re-detained without warning. If eligible for ‘Section 4 support’ (Immigration Act 1999), they receive no-choice accommodation and an ‘Azure’ card, a cashless, pre-paid card, worth £36.62 per week in designated shops. Through tags and the Azure card, some 5,000 migrants on Section 4 are surveilled and monitored. Self-reporting requires migrants to submit themselves to further monitoring and also saves the Home Office the trouble of rounding up potential deportees. In other words, detention is not the end of many migrants’ stories in the UK. It remains a constant threat even after they have been ‘released’ into the community, and some people are detained and released many times before they are removed.

The pain of this contingent situation is evident from the testimony of Said, a Middle Eastern man released after 20 months in detention:

... I’m not allowed to work and I am reporting every three months ... and believe me when I go I know they can detain me anytime—they can detain me forever ... so I will be in the same circle—if this happens again I don’t know ... I thought of finishing my life, to end this suffering...

Consider the experience of Abdul, a young Afghan who was in local authority care as an asylum-seeking child and who worked hard to

integrate into British life. Refused asylum as an adult, he is not only rejected as ‘one of us’ but subject to clumsy attempts at deportation to a country he knows little about and where he fears persecution and death.

... we are not sleeping at night. We don't know what to do with our life 'cos we haven't got nothing. We can't work we can't go to college. What we can do—I'm just going to kill myself (*bangs table*) it's really bad—it's really difficult to think about this stuff.

This is the ‘[hostile environment](#)’ that Theresa May boasts she has created for ‘illegal’ migrants. Living under threat of detention, destitution and deportation, the migrant is ‘everywhere in chains’—chains represented by Section 4 ‘support’, tagging, reporting, raids, illegal employment, and a lack of recourse to the law or protection from abuse.

Excluding a group because of their place of birth and heritage is as unethical as stripping rights from any group without the possibility of reprieve or redemption. The [privatisation of the control of migrants](#), and with it reliance on remote methods of surveillance, brings further concerns. The same companies that profit from the detention, deportation, and warehousing of migrants are bidding to run prisons and other formerly public functions. Not only do they profit from keeping people in the system and by failing to resolve cases, they also distance the British government from the messy end of immigration control. As [even citizenship in the UK](#) becomes contingent, we should all fight for the rights of people already defined by their *lack* of rights and their enslavement by the state.

## The UK: the far shore for torture survivors

*The relatively small number of torture survivors who make it to the UK face disbelief, the threat of detention and removal, and barriers of access to vital services.*

Rhian Beynon

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The world is currently seeing [one of the biggest displacements of people of all time](#), driven by conflict, humanitarian crises, and human rights violations, particularly in the Middle East and Africa. According to the UN High Commissioner for Refugees (UNHCR), the [top refugee-producing countries](#) are Syria and Afghanistan, followed by Somalia, South Sudan, the Democratic Republic of Congo, and Myanmar.

It is safe to assume that a significant proportion of the [estimated 16.7 million refugees in the world today](#) have suffered torture, given the well-documented violence of state and non-state actors operating within top refugee-producing states. Indeed, the DRC, South Sudan, Afghanistan and other top refugee-producing states are the countries of origin for many of the more than 1,000 torture survivors [referred to Freedom from Torture](#) in the UK each year.

The survivors of torture who are referred to Freedom from Torture originate from some 80 countries around the world. Not all of these countries suffer from the intense humanitarian crises that would bring them within the mandate of the UNHCR, such as Iran. Regardless, most arrive at Freedom from Torture traumatised, vulnerable because of their experiences, and fearing further persecution. They have a right to rehabilitation under the UN Convention Against Torture.

Most survivors of torture, however, do not make it to the UK. They remain within their geographic region, hosted by countries such as

Pakistan, Lebanon, Jordan, Chad, Ethiopia, and Kenya. These are, by and large, less wealthy countries with little to offer in the way of security and specialist support to individuals traumatised and made vulnerable by torture. Survivors of torture in these countries have little hope of fleeing to Europe in order to access the support of a charity like Freedom from Torture. This is because formal schemes for proactively assisting refugees to enter the UK—be they torture survivors or not—help shockingly low numbers relative to the scale of the displacement.

### Resettlement programmes in the UK

The [Gateway Protection Programme](#) and the [Mandate Refugee Programme](#) are the UK's official programmes for resettling refugees covered by the UNHCR mandate. Palestine refugees are the most notable group outside this mandate. In January 2014, the UK announced a new vulnerable person relocation scheme (VPRS) in response to the Syrian crisis.

Resettlement programmes like Gateway and VPRS offer important routes to protection in the UK. It is not possible to make an application for asylum from outside the UK, and those fleeing torture often lack the documents, visas, and monies needed to travel to and enter the UK. Humanitarian crises also inhibit travel to a functioning British Embassy so as to make a visa application. Even if one finds a way to apply, there is no guarantee that a visa will be forthcoming.

Despite resettlement's importance as a safe and legal access route for refugees, [Gateway has brought just 5,500 refugees to the UK](#) over the past decade. VPRS, [despite the nearly four million Syrians currently registered with UNHCR in Syria's neighbouring countries](#), has resettled only 187 people in the UK since it began. The UK's response has instead focused on financing refugee response programmes in the region itself. It has [spent more than £800 million \(\\$1.2 billion\)](#) on the crisis since 2011 and is among the top three donors.

The upshot of all this was that in 2014, the year UNHCR declared the global population of displaced people to be above 50 million people for the first time since World War II, the UK resettled just 787 refugees. The general picture is that resettlement programmes cannot be relied on for most of those who come within the UNHCR mandate. They are not an option at all for those torture survivors who fall outside the mandate because they are in countries that are repressive rather than in outright humanitarian crisis.

If their family has financial resources, if local circumstances permit, and a if visa application succeeds, a torture survivor may be able to travel in an immigration category, for example as a student to the UK. But many others with no documentation will [run the gauntlet](#) of the Mediterranean crossing and European port officials to claim asylum.

### **Asylum in the UK**

The UK saw just [24,914 applicants for asylum in 2014, and 59 percent of these were refused on the first decision](#) (although some 28 percent of appeals against asylum decisions succeeded). Eurostat figures suggest asylum applications in the UK constitute a mere 5.5 percent of the total number of applications lodged in the EU28 (Eurostat).

The majority of those in immigration detention in Britain today are asylum seekers. A significant number of individuals are placed into detention as soon as they file for asylum, their application ‘fast tracked’ to remove those deemed ineligible as soon as possible. It is a system notorious for hampering asylum claimants’ access to careful legal advice and for making it difficult for survivors to disclose upsetting case histories, for example torture and other forms of intimate violence.

Home Office policy states that survivors of torture and certain other vulnerable groups should not be held in immigration detention. If they are assessed to be a victim of torture while in detention they should be released under Rule 35 of the Detention Centre Rules. Rule 35 also re-



quires medical practitioners in immigration removal centres to report all individuals they consider to be victims of torture, who may then be eligible for release. However, Freedom from Torture has known many survivors who have been detained, and once individuals are detained Rule 35 reports [are extremely ineffective in ensuring their release](#).

For torture survivors who find a way to live within the UK community—either as refugees, as asylum seekers with ongoing applications, or as refused asylum seekers—life is a continuing challenge. The constant threats of detention and removal hang over many. Work is generally prohibited for those with an asylum seeker status, and welfare support keeps survivors in poverty, [impeding their rehabilitation from trauma](#). NHS services, while theoretically available to torture survivors, are in practice often denied or are not, in most circumstances, sufficient to meet the needs of their recovery.

The 1951 Refugee Convention and much of our modern international human rights framework were the result of learning from the impact of human rights atrocities on European victims during world war II. It is a dreadful irony that while a massive displacement of people is taking place today for similar reasons elsewhere in the world, European countries like the UK are making it so difficult for the victims to obtain the protection and support to which they have a right.

Despite the UK's opposition to any mandatory EU quota system in response to the humanitarian crisis in the Mediterranean Sea, there is nothing to stop the prime minister from making a voluntary pledge to increase the pitiful numbers of refugees offered sanctuary under the UK's settlement programmes.

## Slavery, asylum, and the face of social death in modern day Britain

*The dehumanisation of transatlantic slaves has strong echoes in the UK's current immigration regime, which separates families, denies parents custodial rights over children, and condemns migrants to social death.*

Roda Madziva

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Announcing the publication of her draft Modern Slavery Bill in 2013, British Home Secretary Theresa May [wrote](#), “Traffickers and slave masters exploit whatever means they have at their disposal to coerce, deceive and force individuals into a life of abuse, servitude and inhumane treatment. This is simply unacceptable in modern day Britain”.

Talk of slave masters calls to mind transatlantic slavery, an inhumane system that not only treated human beings as objects of property and authorised their violent control, but also tore the enslaved from their kin and community, wrenched apart husbands and wives, parents and children, and stripped them of independence, power, honour and dignity. As sociologist Orlando Patterson famously [put it](#), the enslaved were biologically alive yet socially dead. Is the treatment of some human beings as socially dead “simply unacceptable in modern day Britain”? My research with Zimbabwean asylum seekers in the UK suggests that it is not.

Like many asylum seekers escaping politically repressive regimes, my Zimbabwean interviewees were parents who had not managed to bring their children with them when they escaped to the UK. They imagined that, once in a safe haven, they would be able to arrange for their children to join them. Yet on arrival, they discovered that the UK asylum system treats parents as asylum seekers first and parents later (if ever). As a result, many parents are forced to endure separation from their children against their will as they struggle through the long

and torturous process of asylum claims and appeals. As one 45-year-old father of two told me:

My children have had these eight years of loneliness... I dread phoning home—calling home has long ceased to be a joy to me... I have failed them, forced into living in exile due to the circumstances.

In addition to separating families, asylum policies deny parents the right to protect and support their children even from a distance. The Immigration and Asylum Act 2002 withdrew asylum seekers' rights to engage in paid work, a decision made on the basis of the unsubstantiated claim that such a right encouraged 'bogus' asylum claims from so-called 'economic migrants'. For asylum seekers who have had to travel alone, to be refused this right is to become entirely helpless in the face of their children's often desperate need for financial assistance. To be granted partial rights—that is, the right to continue to live and breathe but not the right to legally belong, to family life, to freely sell one's labour power, or to support one's children from afar—looks very much like a condition of social death. In the words of one asylum-seeking mother separated from her children:

Without a job ... and a family I have lost my self-worth ...  
My situation is no longer an immigration issue ... it is now  
a death sentence ... I am in a prison with invisible walls ...  
It is a state worse than death itself.

### The story of Sukai

The same sentiment was even more forcefully expressed by Sukai (not her real name), whose son died in Zimbabwe while she was in the UK waiting for her asylum appeal to be settled, and trying to find a way to bring him over as well. As an asylum seeker, she could not even return home to bury him. Sukai was subsequently granted leave to remain, but the judge's decision on her case was then contested by the Home



Martin Deutsch /Flickr. Creative Commons.

Office. As a result she was evicted from her National Asylum Support Service (NASS) accommodation, and left homeless, destitute, disenfranchised, bereaved, and in extremely poor health.

The wrongness of ‘trafficking’ is said to be that human beings are isolated, immobilised, forced to work without pay, locked into dependency with ‘traffickers’ who physically or psychologically abuse them. Victims of ‘trafficking’ are dehumanised and rendered powerless, and the individuals who directly perpetrate crimes against them—the ‘traffickers’ and ‘slave masters’ that Home Secretary May’s recently passed “[historic](#)” Modern Slavery Act 2015 will supposedly punish—have faces. But what of those who subject asylum seekers to what they themselves describe as a ‘living death’?

In grief and desperation, Sukai once went in person to the Home Office department in Croydon that was dealing with her case. She hoped that she would be able to speak face to face with the person who ex-

erted such total control over her life to such devastating effect. But, she explained, she was just directed from one office to another, and nobody working there admitted to holding the power over her fate. “I was told that the Home Office is a system and not a person,” she said. The facelessness of the power of the state intensified her experience of powerlessness:

If the Home Office was a person, I could have demanded to see him or her. I would have wanted even to go to where he or she lives and cry out all my anger. I would have demanded to see how ugly and inhumane this creature is. Unfortunately, you cannot get to sit down with this thing called the ‘system’ and have a one-on-one talk explaining exactly what you are going through, asking ‘Can you please do something about it?’

Asylum seekers are not forced to surrender to the will of another human being. Yet their capacity to exercise personal autonomy, or to assert their will to influence even the most fundamental aspects of their lives and those of their children, is so severely restricted that it appears as a modern form of social death. Why is this acceptable in modern day Britain?

## At any cost: the injustice of the “4 and 4 rule” in Canada

*Immigration rules in Canada are forcing out already-vulnerable temporary foreign workers. The measure's class dimensions are representative of the injustice of Canada's revolving-door system of labour exploitation.*

Stephanie J. Silverman

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Tens of thousands of law-abiding foreign workers residing in Canada became deportable in April 2015. This sudden vulnerability to deportation resulted from the parliamentary passage of a small legislative change called the “[cumulative duration rule](#)”, known colloquially as the “4 in, 4 out” or the “4 and 4 Rule”. Under this rule, non-citizens working on temporary labour visas for four years who had not transitioned to permanent resident status must leave the country for four years—or transfer to visitor or student status—before applying to return.

What this means for children depends on where they were born. Canadian-born children have Canadian citizenship and can stay, while their non-citizen parents must leave; foreign-born children have been asked to [quit school](#) and leave. Either way, their parents who have not successfully transitioned to permanent resident status are being faced with the tasks of packing up their (working) lives, including their tax rebates, unpaid wages, and Canadian pension plan contributions in a short timeframe.

The 4 and 4 Rule may be the federal government's reply to mounting criticisms that too many people are gaining admission to Canada through temporary labour migration programmes. While Canada has adopted and run such programmes since the 1960s, the government has come under fire more recently from opposition groups who argue that these programmes siphon jobs from Canadians hard-pressed to find employment in this tough economy. Although industry, by and

large, supports temporary labour migration, the unions are mixed. Gil McGowan from the Alberta Federation of Labour, for example, [says that these programmes provide](#) “a cover for providing employers with a mechanism that keep wages low when economic conditions suggest that they should go up. The programme needs to go.” Partially in response, the Canadian federal government seems to be retrenching the revolving door of exploitable labour through measures such as the 4 and 4 Rule.

### Foreign workers in Canada

As [Luin Goldring and Patricia Landolt argue](#), there are essentially two tracks for migrant workers arriving in Canada: ‘immigrants’ (understood as workers and long-term settlers) versus ‘temporary residents’ (differing reasons for entry but allowed only short-term periods of residence). Independent yet bounded, the entry tracks “lead workers along separate paths, into distinct labour market segments, and sort them into future citizens and noncitizens. Temporary residents are only temporary: their path leads them to leave Canada and go ‘back home,’ perhaps to return but again on a temporary basis”.

As the number of temporary labour migrants has grown over the last decade, so too has confusion over the programmes under which they are admitted to Canada. In addition to categories such as working holiday programmes, the three main streams are the Seasonal Agricultural Workers Program (SAWP), the Live-in Caregivers Program (LICP), and the Temporary Foreign Workers Programme (TFWP). As the oldest, the SAWP was started in 1966 as a bilateral agreement with Jamaica. Management of SAWP was privatised in 1987 and placed under the control of Foreign Agricultural Resource Management Services ([FARMS](#)). Since SAWP is designed as a circular migration programme with lower-skilled workers leaving Canada after eight months, its enrollees were largely unaffected by the 4 and 4 Rule. The LICP is a unique two-step programme to employ (female) workers as domestic caregivers in exchange for a pathway to citizenship. Reformulated in 1992, the

LICP opened a pathway to apply for permanent residence, but only after enrollees completed two years of live-in domestic service in the private household of their charges/employers. While the government [changed](#) the LICP in 2014 to withdraw the live-in requirement, the caregiver is still bonded to her employer in significant ways. LICP caregivers admitted under the pre-2014 changes are not subject to deportation orders under the 4 and 4 Rule.

With the highest public profile in Canada, the final programme, the TFWP, is plagued by pernicious misunderstandings of its operations. A stop-gap solution meant to fill acute labour shortages, the TFWP is, according to an article from the *Financial Post*, “intended as a last-resort, short-term solution so businesses can continue to grow and create more opportunities for Canadians”. Jason Foster has [tracked](#) the de-skilling of the TFWP: whereas a majority of TFWP enrollees in 2000 were higher-skilled, by 2008 the lower-skilled occupations had become the largest category. With its growth from about 100,000 enrollees in 2002 to as many as 338,000 in 2014, it follows that there is a diverse list of employers looking to hire TFWs.

The expansion of the TFWP in an age of austerity has attracted a swell of attention and made it a stand-in for all things to do with foreign workers. Public debate and discord ranged from [partisan mud-slinging](#) in the federal parliament to angry locals claiming that their jobs were swiped. A major bank’s hiring (higher-skilled) TFWP enrollees to replace local employees was greeted by a large enough storm of controversy that the bank felt compelled to issue a [public apology](#). General coverage in the media ranged from sympathy with the workers over unpaid wages and dirty working conditions to resentment that they were allowed to come during a period of high unemployment, often in [the same article](#).

### **Enter the 4 and 4 Rule**

This snapshot illustrates the complex background against which the



problematic 4 and 4 Rule is being implemented. Apart from the clear xenophobic issues, there are worrying class dimensions to the selection of 4 and 4 Rule targets. To begin with, the high recruitment, airfare, and other fees associated with signing up can lead to a situation of *de facto* debt bondage for TFWP enrollees as they work off these 'loans'. Second, the 4 and 4 Rule applies to people labouring in the lower-skilled TFWP industries, such as retail, hospitality, and manufacturing. The Canadian government has formally exempted the small minority of workers employed in management and professional capacities as well as their spouses and dependants. In fact, there is an option to apply for expedited permanent status under the Canadian Experience Class that is available exclusively to these higher-skilled "immigrants", to use Goldring and Landolt's helpful phraseology. Such immigrants will be spared the decision of whether to leave their children in Canada because their pathways to permanent residence have been cancelled. Delphine Nakache also points out that, if the government is truly concerned with labour shortages, wouldn't it make more sense to place temporal limits on the employer's use of the programme and not on the migrants themselves?

The 4 and 4 Rule is an instantiation of unjust and unequal treatment based on class and labour qualifications. While higher-skilled migrants are walking the path to permanent residence, and LICP domestic workers are still citizens-in-waiting, the majority of TFWP enrollees in Canada have been consigned to a fate of return or removal. The 4 and 4 Rule is propping open the revolving door, and pushing out those people deemed to be disposable workers.

## New mobility regimes, new forms of exploitation in Sicily

*Asylum seekers, refugees, and poor EU citizens are vulnerable to labour exploitation in EU member states. Sicily's agricultural sector illuminates how structural gaps and individual needs exacerbate that vulnerability.*

Letizia Palumbo and Alessandra Sciurba

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The thousands of migrants and refugees making their way to Europe today are, tragically, discussed mainly in terms of death rates, drownings, and possible responses. What is much less discussed is what happens to those that make it past the border guards and onto the European continent. Many such individuals join the ranks of Europe's [exploitable labour force](#) and begin to work alongside their poor EU counterparts in many labour sectors such as agriculture. Their vulnerability, which is not sufficiently addressed by either European or national policies, derives in part from the new mobility regimes that mark current migratory patterns.

The economic crisis has significantly changed the composition of migrants moving to and within Europe. The lack of concrete and realistic opportunities has discouraged non-EU 'economic' migrants from making their way across the common external border, especially if their traditional country of destination has been strongly affected by the crisis. As a result, the main protagonists of the current migratory movements are [refugees](#) and EU citizens. The latter are predominantly Romanian citizens who have been 'pushed out' by the ever-widening gap between the cost of living and the average salary.

Sicily's agricultural labourers come from both these groups. Individuals from sub-Saharan countries, many of whom are asylum seekers and refugees, work largely on the western parts of the island near Trapani, while Romanians dominate in the east in the areas of Ragusa.

In both these cases, irrespective of their legal status, migrant workers are subjected to serious labour exploitation and maltreatment. It is worth mentioning here that many Romanian agricultural labourers are women, and as such are particularly vulnerable to sexual as well as labour exploitation.

### **Different mobility, same exploitation**

A comparison of the geographical areas of Ragusa and Trapani shows how different forms and degrees of mobility (due to the specific legal status) interact with individual needs and life projects to produce a complex system of exploitation.

The case of Ragusa reveals that migrant EU citizens are as vulnerable as their non-EU co-workers in Sicilian agriculture. Indeed, their possibility of moving with no restrictions across EU boundaries does not translate into real access to rights and social justice. In addition, Romanians, who often work abroad in order to remit money back home, rarely consider Italy as a country in which they can build their future. It is merely a temporary place of employment, and as such many feel that even abusive conditions can be tolerated. This acquiescence, a product of Romanian labourers' transience, is one reason why local employers have largely replaced their Tunisian workforce of the 1970s with Romanian labourers. The Tunisian migrants of 40 years ago largely came to Europe to stay, and their planned permanence compelled them to bargain for more equitable working conditions.

In contrast, the exploitation occurring in the area of Trapani highlights how the restricted mobility of asylum seekers and refugees exacerbates the vulnerability of an already vulnerable group. The imposition to stay in Italy as the first country of arrival (EU Regulation 64/2013), the slowness of asylum procedures in Italy, and the lack of adequate hosting and protection mechanisms for asylum seekers have the combined effect of forcing asylum seekers to accept any job opportunity they can find.

New migration patterns and forms of mobility, together with restrictions in access to rights, thus play a fundamental role in aggravating the vulnerability of asylum seekers, refugees, and poor EU citizens. The contemporary labour market systemically takes advantage of this vulnerability, especially in sectors such as agriculture, which rely on labour segmentation and a cheap, flexible labour force.

### **Combating exploitation by grasping structural factors**

The Sicilian context thus offers us a privileged perspective to evaluate EU and national policies on the exploitation of migrant labour. The principal aims of institutional interventions to date have been to prevent irregular migration and to regulate gangmasters. The focus, however, has been strongly on preventing irregular migration, resulting in the lack of adequate protection for both regular and irregular migrants and the relative impunity of exploitative employers. This approach appears to be even more inadequate if we consider that today the majority of exploited migrants are not irregular. Moreover, by employing refugees and EU citizens, exploitative employers avoid being accused of facilitating and exploiting irregular migration.

The only way to combat current forms of labour exploitation in Sicily, as well as in other contexts, is to move from a merely repressive approach to one that is rights-based and capable of tackling the structural factors that create the current vulnerability of migrants. The most pressing issues to address are: the restricted regimes of mobility affecting, particularly, asylum seekers; the labour market segmentation on the basis of gender, nationality and legal status; and the lack of real access to rights and justice for all migrants.

## No agency: laying the groundwork to exploit migrant workers

*There are many tragic stories highlighting the abuse and exploitation of Singapore's migrant workers. Underlying them all is a structural problem: workers' inability to speak for themselves and be respected as individuals.*

Kirsten Han

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Singapore has seen a growth spurt in the past two decades. The [skyline of 1990](#) was already impressive for a city-state built on granite rock at the tip of the Malay Peninsula, but looks dodderly and old-fashioned when contrasted with today's shiny, lit-up spectacle. The Marina Bay Sands with its infinity pool—in which Katy Perry famously [held a press conference](#)—now takes pride of place, and even has the [largest light and water show in Asia](#) every day to get your attention.

None of this would have been possible without the massive numbers of migrant workers in Singapore who clean streets and homes, serve food and drink, and work on construction sites and shipyards. As of [June 2014](#), there are 980,800 migrants on work permits in Singapore, a city-state with a total population of 5.4 million. Of these, 321,200 work in construction, while 218,300 are women working as foreign domestic workers (FDW). Migrant workers thus constitute a significant portion of the island's population, yet they are Singapore's most exploited group of residents.

There are many factors that contribute to the exploitation, domination, and abuse of these workers, but it is their structural lack of agency that lays the foundation. This exists in part because migrants must often pay exorbitant sums to access the job market, which places them in debt to their friends, families, and other creditors. It also exists because statute: a) links work permits to job contracts, thereby exposing migrants to the arbitrary whims of their employers; and b) places

employers in a position of *paternal responsibility* over their migrant employees, privileging the voices of the former while silencing those of the latter.

Men and women from countries like Bangladesh, India, Myanmar, China, and the Philippines often pay hefty sums to agents or training centres in order to obtain jobs in Singapore. I have met some Bangladeshi workers who paid more than S\$10,000 (£4,900) for their jobs. Raising that money often requires loans from family or friends back home, as well as the lease or sale of family land. It is an immediate sunk cost that heaps pressure on the worker's shoulders to do whatever it takes to succeed.

Upon arrival in Singapore these workers enter into a system very similar to the *kafala* or sponsorship system employed in some Middle Eastern nations. Their work permits, which allow them to stay in Singapore, are bound to specific employers. The employer is able to cancel this work permit at any time. When that happens, workers have little recourse to challenge the decision. Such a situation gives employers huge power over their employees; a situation exacerbated by many employers' habit of confiscating passports.

For women working as FDWs, the situation is also complicated by the fact that they are required to live in their employers' homes.

"Some of the problems of FDWs having to live in the homes of their employers include the high risk of sexual and physical assaults, long working hours, confinement and the lack of privacy and space," writes Shelley Thio, an NGO volunteer who has worked extensively with migrant workers. "I have a case where an employer would lock her FDW in the kitchen every time she goes out because the kitchen has a CCTV camera to monitor her movements. I have seen an employer go through an FDW's personal belongings and bags because she claimed that the FDW stole her jewellery."

This lack of agency permeates into every part of a worker's life in Singapore, but is particularly apparent when things go wrong. For example, when a worker becomes ill or injured it is more often than not the employer who makes the decisions for them. I once accompanied the volunteer of a migrant rights' NGO to see a Cambodian domestic worker in hospital. She had allegedly been ill-treated after she had left her employer and moved back into the recruitment agency's dormitory, where she had fallen sick. She wanted to be discharged from the hospital. But the hospital was unwilling to discharge her to anyone but her agent or her previous employer, who was still listed in her work permit as being responsible for her. She, understandably, was unwilling to go back with either.

If she had been anyone other than a migrant worker she would have been able to discharge herself from hospital. She was 38 years old and of sound mind. But because of her status as a worker in Singapore, someone had to be responsible for her. In the end, her previous employer had to sign a letter authorising the hospital to discharge her to the NGO worker and be taken to a shelter for domestic workers.

The hierarchy of authority and lack of agency also become visible when a migrant is injured on the job. [Khan Momen](#) is a Bangladeshi worker who claimed to have fallen while working with a friend on a scissor lift. His employer countered by suggesting that he had been injured in a fight, and was therefore not eligible for work injury compensation. Khan Momen was subsequently charged with two counts of making false statements to an officer of the Ministry of Manpower. At his trial, his employer produced witnesses who said that he had been involved in a fight. Khan Momen was [convicted](#) and jailed for four weeks, then repatriated to Bangladesh without a cent for his injury.

It's difficult to determine whether Khan Momen was telling the truth. The court certainly didn't think so, especially with witnesses testifying otherwise. But NGO volunteers who have experience with such cases

point to several underlying issues that greatly disadvantage any migrant worker caught in such a situation.

Transient Workers Count Too (TWC2), a migrant rights organisation, [reported](#) in 2013 that about a third of workers surveyed reported being accompanied to the hospital by their boss or a supervisor, who then did all the talking for them. Another third said that both they and their boss/supervisor spoke with the doctor, with “varying degrees of input”.

The results of the survey have prompted TWC2 to question the reliability of early hospital case notes. If employers speak on behalf of their workers, it is easy for them to insert their own version of events even when they do not witness the accident personally. When Ministry of Manpower investigators look into case notes to determine the veracity of a worker’s injury claim, whose words will they see?

“When the employer has the right to terminate the employee at any time (online cancellation of the work permit without the worker even knowing about it) and the worker fears repatriation as he has a huge debt back home—it is a situation where there is a huge power imbalance,” wrote TWC2 volunteer Christine Pelly. In such a context, workers might also be afraid to testify against their employers in court.

It’s never easy to tell when things come down to a “he said, she said” situation. But when workers lack agency on such a large scale they do not and cannot compete on a level playing field.



## Freedom fighters: freelancing as direct action

*Migrant domestic workers in the Middle East act as if they were already free when they resist the constraining kafala system by setting out on their own as freelancers.*

Mark Johnson

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Direct action, a defining feature of political practice in progressive social movements, is ‘[the defiant insistence on acting as if one is already free](#)’. I contend that migrant domestic workers in the Middle East practice direct action when they live and work as freelancers outside the regular system of sponsorship known commonly as the *kafala* system.

The [kafala system of visa sponsorship](#) confers largely unregulated powers on employers to control their migrant employees, and restricts the latter’s ability to transfer to another employer without the consent of the initial sponsor. The *kafala* system applies to many sectors of employment, but in this article I focus on migrant domestic workers. If employment ends, then the migrant domestic worker’s documented residency status also ends. The transfer of state powers to employers is further strengthened by the notion that governments ought not to interfere in the private sphere of the home and family. This is now widely interpreted to include the employment relationships that exist within this sphere. Migrant domestic labour is not regulated by employment law, and those laws that nominally protect domestic workers are mainly unenforced.

We now have a reasonable understanding of the *kafala* system and its consequences for domestic workers. We know much less about the many women working outside of that system as freelancers. Freelancing refers to a situation in which migrant domestic workers leave their regular place of formal employment—violating the terms of their *kafala*-based visa permit—and subsequently negotiate a contract of em-

ployment with another. Working as a freelancer often brings enhanced pay and better conditions of employment, such as agreed working hours and time off: freelancers also frequently live outside of their employer's home, a luxury rarely afforded to migrant workers in regular domestic employment. The trade-off is that because freelancing usually entails transfer to another employer without the previous employer's consent, freelancers are subject to arrest and deportation.

Freelancing may be understood as both a product of and enabled by the sponsorship system that creates conditions for labour coercion and abuse. Migrant domestic workers who abscond from employers do so not just because they have been subjected to specific forms of abuse—withholding of wages, excessive workloads, and confiscation of travel documents—but also because the situation of employment fundamentally constricts and constrains their choice and freedom of movement. While many would deem migrant domestic workers who escape such abuse as victims of 'modern-day slavery' or trafficking, their direct action serves to reject such labels and to re-claim their agency by seizing the initiative and acting precisely as if they were free.

In sociology we call this type of behaviour prefigurative politics, meaning that individuals are choosing to act as if they live in the world they *desire* rather than in the world they inhabit. Describing freelancing as direct action and as an act of political prefiguration may seem a bit of a stretch. However, if direct action is not about people deciding in advance what qualifies as an act of freedom or about agreeing on the aims of freedom, but rather simply about people reconstructing social relations by acting as if they were free, then it seems reasonable to suggest that freelancers are a type of (non-violent) social movement.

I see freelancers as constituting a social movement despite the fact they rarely coalesce into a more coherent collectivity. A notable exception to this were the camps that sprung up in Saudi Arabia recently to protest government attempts to regularise and/or deport irregular mi-

grants, including freelancers. Such examples are uncommon though, and freelancers most often rely on transnational networks of kin and co-ethnics to enable their practices of freedom. Through these networks, they create and experience a sense of solidarity with other freelancers through discursive acts of identification, affirming, and asserting alongside one another that they are people who practice freedom.

People's capacity to act, despite and because of the system of constraints they face, is one reason that using the language of slavery to describe migrant domestic workers is problematic. The historical tendency of European abolitionists to overlook the agency and resistance of people who were enslaved in the past is replayed in contemporary representations of migrant domestic workers as the slaves of today.



## **Section three**

### Trafficking and slavery

## Bound and determined: new abolitionism and the campaign against modern slavery

*The question of mobility was central to struggles against the transatlantic slave trade and slavery. Current campaigns focus on the journey into slavery, overlooking the spatial captivity entailed in 'modern slavery'.*

Edlie Wong

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Over a century and a half after President Abraham Lincoln issued the Emancipation Proclamation, millions remain in bondage—children forced to take part in armed conflict or sold to brothels by their destitute families, men and women who toil for little or no pay, who are threatened and beaten if they try to escape.

Thus begins Barack Obama's presidential proclamation inaugurating the [2014 National Slavery and Human Trafficking Prevention Month](#). It couches a humanitarian anti-trafficking appeal in the familiar terms of an anti-slavery struggle that—it is often said—continues to be waged. We see this suggestion in many contemporary campaigns to end human trafficking. Organisations such as New York's New Abolitionists, Free the Slaves, and Anti-Slavery International portray themselves [as carrying forward the crusade](#) begun by the abolitionists who spoke out against the transatlantic slave trade. However, their educational campaigns often take up the mantle of 'new abolitionism' without addressing the mixed legacies of the abolitionism that they invoke. Furthermore, their efforts to raise public awareness often focus on the journey *into* trafficking and slavery, yet overlook the weight of the legal and social edifices built by modern states to curtail and prevent escape.

Mobility was central to political struggles against African chattel slavery and the indentured or bonded Asian 'coolie' labour used to supplement and replace it in the Atlantic economy. Slavery demanded

the regulation of movement. Disciplinary control over black bodies in space was essential to the theory of mastery. “At the heart of the process of enslavement was a spatial impulse: to locate bondpeople in plantation space and to control, indeed to determine, their movements and activities,” [writes the historian Stephanie Camp](#). Slave states restricted mobility in part through the use of passes and residency licenses that declared the bearer either property of someone else or freed (manumitted) resident of the state. Coastal slave states went even further by enacting Negro Seamen Acts. These prohibited the entry of free black sailors and quarantined them in local prisons for as long as their vessels remained in port (and under threat of enslavement if prison fees went unpaid).

Black spatial captivity was not limited to slave jurisdictions. Sojourner laws in northern states allowed slaveholders to travel through or remain on free soil for periods of time without forfeiting their human property. They worked in concert with the 1850 Fugitive Slave Law, which compelled northern citizens and agencies to aid in the recapture of runaway slaves. Moreover, transatlantic anti-slavery activists such as Frederick Douglass and William Wells Brown discovered that manumission or legal freedom did not confer federal recognition when the State Department denied their passport requests on the basis of race. State and federal governments acted on their powers to determine who circulated within and crossed their borders; they systematically restricted black mobility.

Historical abolitionists began explicitly identifying personal liberty with the freedom of movement in their print and legal campaigns. They traced this concept back to [William Blackstone's \*Commentaries on English Law\*](#): “personal liberty consists in the power of locomotion, of changing situation, or removing one's person to whatsoever places one's own inclination may direct, without imprisonment or restraint”. This right of locomotion was essential to freedom, just as its denial was essential to enslavement. It constituted a theft of birthright that was

synonymous with the theft of person in slavery.

The end of legal slavery held out the promise of a world in which mobility was no longer restricted, policed, or criminalised. For the newly liberated, wrote the scholar [Saidiya Hartman](#), “the sheer capacity to move...provided the only palpable evidence of freedom”. Abolition, however, did not ease the destructive impact of white racism or protect the liberated from new forms of captivity, such as forced labour contracting, debt peonage, sharecropping, and [convict leasing programmes](#). At the dawn of the twentieth century, the emerging legal architecture of Jim Crow curtailed the freedom of movement in ways tragically continuous with the past era of slavery.

The types of exploitation often referred to as ‘modern slavery’ are exacerbated by immigration controls and the forms of spatial captivity they entail. Trafficking today remains largely understood in terms of involuntary transit or transfer, even though overt coercion may not have influenced departure, and the migration itself may have involved different degrees of legality. The earliest efforts to parse these differences took place in the context of historical abolitionism.

Just months before the Emancipation Proclamation, Lincoln signed the “Act to prohibit the ‘Coolie Trade’ by American citizens in American Vessels”, in response to public outcries against American participation in what was called ‘the yellow trade’. The formal end of the transatlantic slave trade and domestic slavery precipitated wide-scale labour crises across the western hemisphere. The plantation economies of the US South and the British and Spanish Caribbean drove demand for disposable, cheap replacements from colonial India and China. The Coolie Trade Prohibition Act was America’s last slave-trade regulation and its first federal immigration restriction. It explicitly differentiated illegal human importation from immigration, and established certification of voluntary emigration as the condition of lawful entry into the US. This fundamental distinction between voluntary and involuntary

migration has also structured more recent trafficking protocols, including the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children.

Efforts to combat trafficking have “[consistently translated into efforts to restrict movement](#)”. As a consequence, trafficking prevention often encourages anti-immigrant policies that fortify national borders and further restrict legitimate movement in ways that are detrimental to migrants. The confiscation of passports and other documents make it difficult for trafficked persons to establish their legal identity or circumvent immigration controls. Even documented migrants caught up in the global networks of exploitative labour relations often find themselves ineligible for various forms of institutional relief. Relating the broader history of abolitionism to contemporary struggles against modern slavery helps us better recognise how transatlantic slavery and its prevention were both predicated upon a vast legal architecture of policing movement that bound the formerly enslaved to new forms of servitude after emancipation. To address contemporary forms of trafficking or ‘modern slavery’ without acknowledging the freedom of movement as a fundamental human right (one recognised by the Universal Declaration of Human Rights) inadvertently contributes to the problem and neglects the complex history of struggle to which ‘new abolitionist’ organisations lay claim.



## Rights talk, wrong comparison: trafficking and transatlantic slavery

*Transatlantic slavery relied on force to move people, while today's 'trafficking' does not. Vulnerable migrants have more in common with those escaping from historical slavery than those entering into it.*

Julia O'Connell Davidson

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'Human trafficking', [according to Free the Slaves](#), is the process through which a person 'is moved from one place to another for the purpose of enslavement', a definition eagerly seized upon by Western political leaders since it allows them to present their efforts to control borders as part of a moral struggle for human rights and against slavery. But what are the similarities between what is described as 'trafficking' and the transatlantic slave trade to which it is routinely compared? There are no modern equivalents of the many fortresses and castles that dotted the western coast of African slave trading regions, in which captured people were held in dungeons, sometimes for long periods, before being loaded and shackled on slave ships. Today, whether queuing outside recruitment offices or waiting for a boat owner to take them across the Mediterranean, those who may or may not end up in highly exploitative and heavily restricted conditions are invariably people who actively *want* to migrate, and generally have excellent reasons for wishing to do so.

The transatlantic slave trade relied upon overwhelming physical force at every stage of movement. What is dubbed 'trafficking' does not. In fact, attention to people's motivations for moving provokes a very different kind of comparison between past and present. It suggests that contemporary migrants who are vulnerable to exploitation and abuse have more in common with those who sought to escape *from* New World slavery, than those transported *into* it.

### Keeping chattel slaves in

Though legally constructed as property, those held in chattel slavery remained human beings with wills of their own. This presented slaveholders with a unique set of problems that they did not face with their inanimate property. To enjoy their property rights, slaveholders needed to closely [control the mobility of the enslaved](#). At the same time, it was not in their interest to literally imprison slaves, as a slave held permanently captive in a dungeon would not be a productive asset. Physically constraining them by means of balls, chains and other such instruments also was often impractical, as slaves were often needed to run errands or transport produce, among other tasks.

Slaveholders wanted to simultaneously allow and repress the mobility of their human property, and they relied heavily on the law and law enforcers to secure these contradictory goals. In Barbados, the Slave Code was revised in 1688 to introduce a pass system, making it mandatory for slaves to carry a pass or ticket when leaving their plantation. It also placed the burden of policing this system on *all* white men, requiring them to whip and detain wandering slaves until claimed by their owners. This system for controlling the enslaved was mimicked and elaborated in slave states of the American South. From 1642 in Virginia, ship captains were prohibited from setting sail with passengers who had no pass. Here and elsewhere, extremely punitive sanctions were incrementally introduced against captains and owners of vessels found carrying fugitive slaves to freedom, and against anyone offering succour and assistance to slaves as they made long, difficult, and extremely dangerous journeys by foot.

For escaping slaves, the journey to freedom was often across harsh physical terrain, usually without benefit of map or geographical knowledge. Those fleeing from Texas to Mexico (where slavery had been abolished in 1829), for instance, faced the peril of armed slave hunting parties, getting lost in the desert, and even being captured by nomadic Comanches or Apaches. Sometimes, in exchange for a small

sum, Mexicans living in Texas would guide them to the border. Here and elsewhere, escaping slaves also took great risks by placing their trust in a third party. Punishments for captured runaways included whipping, stocking, ear cropping and other mutilations. Though some of those who smuggled slaves to freedom were brave altruists in the mould of Harriet Tubman, others who offered assistance proceeded to cheat or betray them.

### Keeping unauthorised migrants out

There are striking similarities between the techniques designed by slave states to contain slave mobility, and those deployed by contemporary states to manage and control migration. For passes and tickets, read passports and visas; for laws criminalising ship captains who assisted fugitive slaves, read [carrier sanctions](#). As Slave Codes historically obliged all white citizens to police the movement of slaves, so increasingly in Britain, the entire community is being mustered to monitor unauthorised movement. Employers, universities, and now hospitals [and private landlords](#) are all legally obliged to check the status of migrants and report those suspected of living in the country without authorisation or of breaking the terms within which they have been permitted to move. Banks and building societies too [face sanctions](#) if they allow 'illegal' migrants to open accounts.

In 2002, the Immigration Act in Malaysia was amended to introduce whipping for illegal migrants and for those who employ them. Three years later, a Volunteer Corps was [granted powers](#) to arrest irregular migrants. Corporal punishments are not administered to irregular migrants in the EU, Australia or the United States, but their border policies are lethal. Many deaths are attributable to the deliberate actions of state actors. There are also noticeable continuities as regards contemporary states' methods of [limiting the mobility of migrant workers](#) whose entry they *do* authorise, and the ways in which slave and colonial states simultaneously enabled but constricted the mobility of slaves.

Immigration controls generate markets for migration services (both state authorised and clandestine), and it is true that actors in these markets do sometimes exploit, cheat, and/or mire migrants in debt. They may even rape, hold hostage, or kill those they have promised to assist. However, many simply provide a service, albeit often at a high price. Many irregular migrants even receive support and assistance for [purely altruistic reasons](#), or on the basis of kinship or friendship, and not for profit. As was the case for escaping slaves, the motives and practices of those who facilitate unauthorised cross border movement today span the full moral spectrum from thuggery to selflessness. But no matter where they stand on this spectrum, they are criminals in the eyes of state actors, just as all those who facilitated the movement of fugitive slaves [were criminalised](#) by nineteenth-century slave states.

### **What have rights got to do with it?**

The legal edifice that controls mobility today was no more designed to protect human rights, and is no more compatible with that ambition, than what was constructed by slave states centuries ago. Its object is to deny the [‘right of locomotion’](#) to certain groups of human beings. Without that right, people are at heightened risk of abuse and exploitation in the course of movement and at the point of destination. Describing those for whom the risk turns into reality as ‘trafficked’ and comparing their situation to that of Africans transported into slavery displays a startling [indifference to the historical realities of transatlantic slavery](#). It also exonerates states rather than holding them accountable for the staggering human cost of the immigration regimes (including anti-trafficking policies) over which they preside.

## Silencing the challenging voices of the global 'subalterns' in anti-trafficking discourse

*Contemporary anti-trafficking discourses are powered by a series of gendered and racialised binaries that silence the voices of the global subalterns, undermining their agency and defusing their transgressions.*

Lucrecia Rubio Grundell

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Contemporary forms of human trafficking are analysed from a variety of different and sometimes competing perspectives. Rarely is there consensus among academics, politicians, or activists regarding what 'trafficking' is or what to do about it. Despite these differences, **contemporary anti-trafficking discourses agree on one idea**: there is such a thing as 'trafficking' that can be discovered, analysed, and told.

'Trafficking' however, is not a neutral concept into which facts can be easily inserted, and from which policy responses can be efficiently derived. Instead, the 'reality' of trafficking is *created* by those discourses that have become dominant and accepted as 'truth'. These discourses allow for particular understandings and actions, while foreclosing others. It is through these discourses therefore, that 'trafficking' emerges as a phenomenon that can be governed.

The convergence we've seen among otherwise disparate—and at times contradictory—narratives results from their common use of conceptual binaries to render the complexities of trafficking understandable: legal versus illegal migration, slavery versus free labour, or victim versus criminal. These binaries, which often become gendered and racialised, serve to articulate identities, notions of belonging, and conceptions of development in ways that silence the challenging voices of the global 'subalterns'. The subalterns, according to **Gayatri Chakravorty Spivak**, are not simply those who are oppressed or disenfranchised. They are those who are oppressed and disenfranchised *in such a way*

that forecloses any possibility of moving upwards. The global subalterns therefore, are those populations who are removed from all lines of social mobility. They are relegated to a space that is not a space, a position of political invisibility and misrecognition that does not permit the formation of a recognisable basis of action.

### The many binaries of anti-trafficking discourse

All hegemonic narratives understand trafficking to be an epiphenomenon of irregular migration, in opposition to legally approved modes of migration. This is problematic for two main reasons. First, as the work of [Rutvica Andrijasevic](#) and others has shown, trafficking can have elements of legal migration, such as legally obtained visas, and legal migration may include illegal elements too, such as bribes from state authorities.

Second and more importantly, to assume that regular and irregular migration are completely different hides the fact that such a distinction depends on the sovereign power of nation-states to control their borders. The power of this discursive separation ultimately serves to protect nation-states from those who are considered unwanted, and to justify a state's use of force to accomplish that goal. It also conceals that a causal relationship exists between the two, as many migrants are *forced* into irregular forms of migration precisely because formal migration channels are not available to them.

Another dichotomy employed by hegemonic anti-trafficking discourses distinguishes between slavery and free wage labour. The absolute nature of the slave's subjection is contrasted with capitalist wage labour underpinned by the presence of a contractual relation. This relation, however, presupposes the free nature of the contracting subject. Because slavery does not exist as a legal status however, the distinction between slavery and free labour actually depends on the definition of what constitutes tolerable and intolerable forms of exploitation.

This definition is, above all, political. Current anti-trafficking discourses render invisible the ‘unspectacular’ exploitation suffered by many as a result of the routine operations of global capitalism. They do this by limiting the ‘intolerable’ to the extreme exploitation connoted by the notion of ‘slavery’. Moreover, anti-trafficking discourses depoliticise the question of migrants’ labour rights by racially representing slavery as characteristic of non-democratic societies, and wage labour as specific to capitalist market relations in liberal democracies. This disconnects their economic exploitation from global economic disparities.

### **Forced vs. voluntary: constructed innocence and guilt**

Given that many low wage workers undergo similar experiences of exploitation, anti-trafficking discourses must further distinguish between forced and voluntary migrants. This singles out the ‘experience’ of trafficked persons, depicting them as ‘innocent’ within activities that are criminalised, such as irregular migration or prostitution. The collateral effect of this is to divide migrants into different categories according to their degree of agency.

These categories are, again, heavily racialised and gendered. In fact, while most legal instruments designed to combat trafficking include a specific mention of women and children, no such reference is contained in legal instruments regarding smuggling. Anti-trafficking discourses often depict women (especially non-western women) as particularly devoid of agency, victimised, and subject to (sexual) abuse. By linking the risks of migration and sexual abuse to the fact that they are women however, anti-trafficking discourses often encourage women to not migrate at all in the name of their own protection.

The forced/voluntary distinction is applied far beyond migration. Prostitution, for example, tends to be analysed within the dominant western script on sexuality. This confines sex to intimacy and love, and thereby portrays all sexual acts that take place outside of such spheres as degraded or degrading. As a result, prostitution is often understood

as immoral and inherently sexist, and therefore contrary to the rights of women. This understanding makes those who consent to engage in prostitution somehow ‘guilty’ or ‘wrong’, whether immoral themselves or suffering from a severe case of false gender consciousness.

The distinction between forced and voluntary prostitution therefore, is underpinned by a distinction that separates ‘whores’ from the hegemonic understanding of ‘womenhood’. This distinction not only divides and disciplines women, but determines their innocence or guilt. It also upholds a view of sex as naturally procreative, thus reifying the notion of the ‘good sexual citizen’ who restricts sex to the realm of the intimate and private.

### **Victims vs. criminals: the final dichotomy**

Ultimately, all these distinctions amount to a clear separation between ‘victims’ and ‘criminals’. Paradoxically, the need to draw such distinction derives from current anti-trafficking discourses themselves. These discourses must adequately distinguish ‘real’ trafficked persons from ‘bogus’ ones if they are to consider individual cases of prostitution, irregular migration, and transnational organised crime as ‘victims of trafficking’. This distinction is, like all the binaries upon which it is sustained, gendered and racialised as the role of ‘victim’ or ‘criminal’ is linked to particular identities.

In the words of [Jo Doezema](#), “it is not an accident of history, but a legacy of empire, that third world prostitutes’ suffering bodies are at the forefront of certain feminist anti-trafficking campaigns today”. Non-western women are the typical victims of trafficking within hegemonic anti-trafficking discourses. A nexus is established between their identity and their victimhood status. They are presented as [poor](#), [uneducated](#), [tradition-bound](#), and [victimised](#), and consequently in need of ‘rescue’. ‘Criminals’ too are gendered and racialised, as they are identified primarily as male and non-western criminal gangs.



In using gendered and racialised notions of ‘victims’ and ‘criminals’, current anti-trafficking discourses locate responsibility in the unscrupulous practices of certain individuals, or in terrible cultural and economic conditions originating most commonly outside of the West. They also position western governments as unrelated to the situation of vulnerability of irregular labour migrants. As such, they then become *rescuers* with pure intentions and a moral commitment to the care of others. Such discourses ultimately serve to silence the voices of the global ‘subalterns’. They construct a hierarchy of patriarchal and economic development that depoliticises their agency and defuses any challenge that their transgressions may pose to the structuring of citizenship, mobility, and labour rights in exclusionary terms.

## Safe migration as an emerging anti-trafficking agenda?

*Safe migration has become a popular way for anti-trafficking organisations to re-articulate how a concern with labour exploitation relates to migration, yet it remains unclear how 'safety' can be ensured.*

Sverre Molland

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Current efforts to combat 'modern slavery' must be understood within the wider context of discourses, programmes, and policies that target migrant labour. Since the 1990s, the dominant political focus has been on 'human trafficking'. Although anti-trafficking remains popular, it has been subject to considerable criticism, even within the anti-trafficking sector itself. A key point of contestation regards the ways in which anti-trafficking relates to migration policies.

For example, it is well known that [anti-trafficking discourses easily lend themselves to anti-immigration agendas](#). Deporting a migrant under the auspices of anti-trafficking efforts makes deportation sound almost heartwarming: the poor victim gets to be re-united with their loved ones 'at home'. The language of 'modern slavery' unsurprisingly emerged out of these anti-trafficking discourses. However in recent times we have also seen other related approaches come to prominence. One example is 'safe migration', a concept that allows aid programmes, activists, and moral entrepreneurs to advocate for migrants in ways that attempt to evade a focus on repressive border control regimes.

The concept of 'safe migration' is not entirely new, but it has been gaining prevalence ever since organisations began to notice donor fatigue regarding human trafficking. As one senior IOM official in the Mekong region recently told me, "the human trafficking candle is burning down". In response, programmes referring to 'safe migration' are now becoming more common.

### So, what is 'safe migration'?

'Safe migration' is related to, but not synonymous with, 'legal' migration. Activists and scholars alike argue that providing legal avenues for labour migrants reduces the risk of exploitative practices in labour supply chains. The *2009 Human Development Report* explicitly argues that legalising labour migration contributes positively to both the well-being of migrants (including reduced risk of trafficking) and to development. 'Safe migration' programmes however go beyond this to usually include four elements: the legal status of migrants, progressive awareness raising, trust building (brokers vs. social networks vs. licensed recruitment firms), and institutional support mechanisms in the migration process (such as hotline phone numbers for migrants).

Thus, aid organisations move beyond a strict focus on the law when they talk of 'safe migration'. They do not merely advocate legalising migration; they also work towards making migration *safer* by emphasising the importance of social networks and progressive awareness-raising amongst migrant populations. As with efforts to legalise labour migration, a key assumption is that empowering migrants will curtail the market for traffickers and other unscrupulous facilitators of mobility. Within this framework, both officially sanctioned modes of recruitment (licensed recruitment companies/brokers) and informal migration networks of friends and acquaintances are assumed to result in better ('safer') conditions for labour migrants. Hence, implicit inferences are made regarding vulnerability, risk and safety in relation to different modes of recruitment, and are evident in programmes in the Mekong region and elsewhere.

It is therefore important to remain cautious regarding what 'safe migration' can do to improve conditions for migrant labourers. As I have shown [elsewhere](#), assuming certain 'types' of migrant recruitment constitute 'safety' (such as official labour recruitment companies, or informal migration networks) is problematic as it is precisely through such arrangements that non-consensual recruitment takes place.

Furthermore, safe migration in the form of legal migration status can work in counter-intuitive ways. Rather than producing safety through legal status, working permits and passports can become capital resources that are appropriated and produced through brokering networks. For example, evidence of residential address—required information as part of passport application—can become a commodity that can be traded through brokers. In my own research I have also come across cases where labour permits are arranged through brokers and the fee is added to the migrant's debt bondage. There are also instances in which labour migrants pawn their passports to brokers in exchange for short-term cash.

Questions must also be raised regarding what safe migration programmes actually do. For example, migrant hotlines are frequently mentioned amongst programmes that profess 'safe migration' approaches. Such hotlines have already existed under the auspices of 'anti-trafficking' for years, and it's more than unclear how 'hot' such hotlines are. My current research on safe migration and hotlines in the Mekong region suggests not only that very few migrants actually use them, but that operators have significant limitations in acting upon the few phone calls they receive.

Safe migration awareness-raising can also easily place the onus of change on the migrant themselves, thereby asking very little in terms of transforming how labour markets and migration regimes operate. Whereas labour migrants receive training in how to reduce risk through migration, less is done to address why labour markets are structured in ways that produce such risk in the first place. Finally, safe migration efforts may also be a two-edged sword, given that they introduce increasing forms of surveillance of migrant populations. Despite the official aim of migrant 'safety', there are no guarantees against safe migration programmes turning into instruments for social control and punitive anti-immigration agendas.

So, what are the positives? A notable contrast with both ‘modern slavery’ and ‘human trafficking’ is how safe migration avoids any fetishisation of misery. In other words, safe migration places a specific focus on the desired *outcome* of labour migration (i.e. safety) as opposed to a humanitarian discourse of suffering. As such it may at least provide a useful frame for discussions regarding migrant labour policies.

## 'Foreign criminals' and victims of trafficking: fantasies, categories, and control

*Casting migrants and smugglers as 'victims and villains' allows states to play saviour and legitimates immigration enforcement as the sole appropriate response.*

Luke de Noronha

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Some people who live outside of their country of origin don't really count as migrants. They might be expats; they might not be named at all. But Australian backpackers, French nannies, and international bankers are not really what we mean when we talk about migrants. If, however, you are the kind of person we mean when we talk about migrants—i.e. you are racialised and/or poor—then you are generally portrayed as either a victim or a villain. Migrants are constructed as victims and villains by a range of actors, including the state, journalists, politicians, judges, migrant advocates, and academics.

Gender and race are central to determining who goes where within this framework. In my work on 'foreign criminals', I examine the mechanics of gender and race in producing villains. 'Foreign criminals' have attracted much media and political interest in recent years. They are discursively constructed as racialised men who commit acts of hypermasculinist violence, often sexual, thus imperilling 'our' streets and, importantly, 'our' women. This construction of the 'foreign criminal' as a monstrous villain works to justify, on moral grounds, policies of imprisonment, indefinite detention, and deportation. This narrative is a gross oversimplification that relies on imaginaries familiar to those who work on issues surrounding 'trafficking'.

The Victim of Trafficking (VoT for short) is not a human type. It's an administrative category produced by immigration controls. This is not to deny that some migrant sex workers—women, men and trans peo-

ple—find themselves in truly awful situations. Rather, it is to suggest that such administrative constructs do not necessarily reflect meaningful distinctions from the perspective of the individuals concerned.

The anti-trafficking narrative rests on a conception of the world in which nasty individuals force vulnerable people into servitude. Border controls have nothing to do with it whatsoever. The narrative further relies on crude images of suffering victims, images that marginalise those who don't fit the mould. Not every migrant sex worker fits the image of the ideal victim (see e.g. [Mai on non-heteronormative migrant sex workers](#)), but most—dare I say all?—would still benefit greatly from substantive human and labour rights.

The images of the VoT and the 'foreign criminal', both entangled in a twisted fairy tale of caricatured weakness and barbarism, simplify and distort much messier realities. Casting non-citizens in these roles helps to rationalise immigration controls.

When VoTs are constructed as helpless victims, held captive by unscrupulous (foreign) traffickers, enforcement becomes the appropriate response. As such, states are able to attest to the morality of immigration controls; victims are saved as the authorities work valiantly to eradicate 'sexual slavery'. The role of immigration controls in 'holding people captive' is effaced in this narrative. The vulnerabilities of migrant sex workers are reduced to individual and extreme forms of abuse; the state disappears only to reappear as saviour. Put simply, if traffickers are evil and VoTs helpless, then the state needs to act through aggressive forms of crime and immigration control.

Likewise, if non-citizen offenders are portrayed as violent, savage outsiders then their expulsion becomes the only suitable response. This has wider implications for the legitimisation of detention and deportation policies. Images of 'foreign criminals' as killers, rapists, and paedophiles work to justify and celebrate the detention and deportation

of any non-citizen with a criminal conviction, and, increasingly, [any non-citizen who is even associated with or accused of criminal conduct](#). Again, the narrative invokes victims and villains, with immigration controls working to protect the former and punish the latter.

Importantly, the VoT and the ‘foreign criminal’ only become intelligible in relation to problematic ideas about race and gender. According to [Rutvica Andrijasevic](#), the anti-trafficking narrative relies on images of “wounded and inanimate female bodies”. In other words, [the women that need saving are usually racialised in problematic ways](#). Similarly, the figure of the ‘foreign criminal’ preys upon deeply entrenched fears about the dangerous sexuality of racialised men. Both of these sets of racialised and gendered stereotypes justify draconian forms of immigration control and construct the state as a (masculine) saviour.

I have become wary of this economy of suffering that undergirds most debates on migration. [As Julia O’Connell Davidson notes](#):

Because suffering is not raw datum, it can be selectively recognised...unfortunately, it is perfectly possible for states simultaneously to recognise some kinds of suffering as a qualification for community inclusion, but continue to operate the lethal immigration regimes and border controls that both deny and generate other kinds of suffering.

[Arguing that rights should not be fastened onto suffering](#) is not to deny that certain migrants have specific vulnerabilities. It is not to suggest that all migrant sex workers have it easy. Nor is it to ignore or underplay the pervasiveness of male sexual violence (sometimes non-citizens *are* guilty of hypermasculinist acts of sexual violence). However, we must remain fiercely critical of any conception of the state as protector.

Migrant sex workers often don’t look like VoTs, and policies instituted under the anti-trafficking rubric tend to bolster the forms of control



directed at non-citizens who sell sex. Likewise, non-citizen ex-offenders usually don't look like the caricatured 'foreign criminal'. Instead, their complex biographies might include experiences of racism, poverty, irregularity, and exclusion. Finding room to speak about these migrants requires us to resist buying into black and white notions of victims and villains, or into any such fantasy that casts the state as a saviour of VoTs. We must, instead, attempt the much harder task of critically thinking about how race and gender play into our preconceptions of who needs saving from whom.

## North Korean migrants in China: neither trafficked nor smuggled

*North Koreans' migration to China is highly complex, more so than when it is depicted simply as 'human-trafficking' and/or 'modern slavery' in anti-trafficking discourse.*

Kyunghee Kook

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The Korean Demilitarised Zone (DMZ) has formed a *de-facto* border barrier between the Democratic People's Republic of Korea (DPRK) and South Korea since the end of the Second World War. The DPRK, a Stalinist and totalitarian country governed by the dictatorship of the Kim family, also closely polices its borders with Russia and China, and authorises its people to travel abroad only in very exceptional cases. Despite these obstacles, political problems, economic crises, and food shortages have all combined to provoke an exodus of desperate North Koreans into China in search of sustenance, employment, and a better life. A North Korean woman described the absolute hunger that drove her and her family to cross the border into China to me:

My family woke every morning worrying about what to eat. We usually got only a watery corn soup in a day. We sometimes had starved for three or four days. When there was nothing to eat, my sisters and I put some soil into the water and imagined that as a chicken soup and then drank it. I feared I would die of starvation.

It is estimated that there are as many as 100,000 North Koreans in China, of whom more than half are women. The journey into China is extremely perilous, and escapees are not safe once they manage to cross the border. In China they are regarded as illegal aliens. If discovered by the authorities, they will be repatriated to North Korea where they are punished by being sent to a labour camp, in effect, a concen-

tration camp. Their illegal status in China also leaves them vulnerable to various forms of exploitations and violence.

North Korean men mainly find temporary, outdoor-based, manual labour such as construction and farming in China. However, working outside leaves them highly visible and thus vulnerable to arrest or deportation. For this reason, North Korean men tend to stay in China for only short periods, returning to North Korea once they have gained sufficient resources. North Korean women, by contrast, can find employment in more concealed places. They often work in private houses as domestic workers, in textile factories, or the sex industry, or they use marriage to Chinese men as a strategy for subsistence. The hidden nature of their opportunities in China places North Korean women in the contradictory situation of being simultaneously less susceptible to immigration crackdowns and more vulnerable to exploitation.

There is a good deal of evidence that the exploitation and abuse endured by North Korean women in China can be extreme. This has led many human right groups, individual researchers, media reports, and international bodies such as UN to describe them as victims of ‘modern slavery’ and ‘human trafficking’. However, there is also evidence that their experience of exploitation and abuse ranges along a continuum, with some escapees experiencing poor but not violent conditions, and managing to earn and remit money home. Moreover, even when the abuse and exploitation is severe, escapees still regard the prospect of return to North Korea as more dreadful. One young woman who had been subject to forced prostitution and extensive violence said in an interview with National Human Rights Commission of Korea: “I could not report it to the Chinese police because I was illegal in China. I was so terrified to be repatriated North Korea, which would be the worst of all.”

Barack Obama recently [described](#) North Korea as a “pariah state” whose heavily militarised border with the South marks “freedom’s

frontier”. We thus might imagine that those who flee it would be very readily accommodated within the framework of international law designed to protect the human rights of people who move, or are moved, across borders. Who is this corpus of law intended to protect if not people who manage to escape over freedom’s frontier? And yet North Korean escapees often fall between the categories used in international law and by states to divide migrants into ‘deserving’ and ‘undeserving’ groups—forced or voluntary, political refugee or economic migrant, trafficked or smuggled.

Escapees from North Korea are fleeing hunger more often than outright political persecution. Starvation is the ‘collateral damage’ of the political system under which they live, and something that drives them to seek paid work in China in order to survive and/or remit money home. Once in China, they are vulnerable to conditions and experiences often attributed to ‘victims of trafficking’, yet this vulnerability arises from their status as illegal migrants. It is not linked to coercion or deception in the course of movement.

On the contrary, their movement across the border is rarely forced. They want to move and so are generally ‘complicit’ with those who facilitate their movement. They look, in this respect, like the ‘economic migrants’ that states normally define as ‘smuggled’. In crossing the border, however, they commit what is considered a ‘crime’ by both the Chinese *and* the North Korean state, and this renders them liable to indefinite detention in horrific conditions if detected and returned home. Thus, ‘smuggled’ or ‘economic migrants’ are not quite the correct terms either for North Korean migrants in China. These concepts fail to capture the complexity and the fluidity of North Korean migrants’ situations.

To frame escapees’ situation as a problem of ‘trafficking’ does not help to protect them from this eventuality. On the one hand, adopting the language of trafficking limits the scope of concern to those who have

experienced a very narrow and particular constellation of abuse and exploitation. The rubric of trafficking excludes those who either manage to escape independently or to avoid unspeakably vicious treatment by employers or spouses in China, even if they would be subject to terrifying violence when returned to North Korea. On the other hand, even those afforded the status of ‘victim of trafficking’—not an easy status to attain, given that migrants must produce evidence demonstrating that they were forced or deceived into moving, and coerced into forced labour—are not necessarily protected from return. North Koreans recognised as ‘victims of trafficking’ by the Chinese authorities have been repatriated. Back in North Korea, they too face punishment in labour camps.

Many Western commentators would doubtless blame the Chinese government for its failure to recognise North Korean escapees as having a right to asylum, and for returning ‘victims of trafficking’ to a state that will, predictably, fail to protect them as such. But how does China’s policy differ from that of governments of liberal democratic states, which also [refuse to recognise flight](#) from dire economic circumstances as a legitimate basis for claiming asylum, and which [also send people identified as ‘victims of trafficking’ back to home states](#) that lack the resources or the political will to protect them? For example, the ‘trafficked victims’ who get settled in Western Europe or North America are often sent back to their countries of origin. Even if some of them receive the right of residence in those countries, the terms of their residency are commonly a limited certain period or for a short duration of criminal proceedings.

The immigration and asylum policies of ‘non-pariah’ states may be designed to keep people out rather than lock them in. But as the North Korean case illustrates, they have little to do with human rights. Indeed, ‘trafficking’, ‘smuggling’, and ‘asylum’ as statist categories in anti-trafficking discourses fail to understand or address the situation of North Koreans who manage to cross the border into China.

## When spring comes, smugglers are in the news

*Migrants in Morocco often attempt to cross the Mediterranean only after years of exploitation and exclusion. Their vulnerability is a product of EU policy and its preoccupation with 'transit migration'.*

Inka Stock

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When spring comes the weather is fine in the Mediterranean and the sea is calm. Like every year, this is the time when media reports on [large numbers of migrants drowning](#) in the Mediterranean begin to multiply. In spring, we hear from government officials and journalists about [the crisis](#) engendered by a seemingly uncontrollable flood of migrants massing at the North African coast ready to cross to Europe. We hear how these migrants fall victim to ruthless smugglers who put their lives in danger, how they have gone through hell 'transiting' through many countries, again often smuggled across borders without valid papers.

This vision drives calls to intensify actions against 'trafficking rings' in the Mediterranean, while at the same time to save money on rescue operations like *mare nostrum*, the Italian search and rescue operation that ran for much of 2014. If 'smugglers' and 'traffickers' (the terms are employed interchangeably in this context) are caught and punished, we are told, migrants will cease to suffer at their hands. This may appear to make some sort of intuitive sense, especially because it is repeated to us *ad nauseam* in the press and by politicians, but that story is incomplete.

Libya was at the forefront of the news in 2015 as the starting point for the deadly journey to Italy. However, it is worth considering the situation of migrants at other parts the North African coast, particularly in those countries that have not been torn apart by civil conflict. These migrants' experiences have primarily been shaped by recent changes

to both European and domestic migration policies. In Morocco, for example, migrants waiting to move to Europe are mostly from Sub-Saharan African countries and have often spent five to ten years in the country. Some have unsuccessfully tried to cross several times, while others have never even attempted it because the price is high and the employment opportunities in Morocco are extremely limited.

Many Sub-Saharan African migrants in Morocco have been there for a long time but have no formal immigration status. Morocco instituted exceptional legalisation measures in September 2013, but a large undocumented population remains because many either do not meet the necessary criteria or arrived after the application deadline in December 2014. Those who were regularised furthermore only receive a one-year residence permit. This leaves them with few possibilities to find work, to train for a job, or to receive education. Though many of the migrants arrived through irregular channels, some entered Morocco legally on tourist or student visas. They gradually slipped into a situation of irregularity when their visas ran out and a change of status became difficult.

Missing too from most media narratives is the fact that Sub-Saharan migrants in Morocco did not all travel there in order to get to Europe. They do not immediately seek out ‘smugglers’ to take them over the Mediterranean. Many actively try to make a life in Morocco or to study there, however current immigration laws make it virtually impossible to stay legally for an extended period of time. This was not always the case. Until the beginning of the millennium, penalties against those who stayed in the country without authorisation were only rarely applied. Indeed, the topic of irregular migrants rarely became an issue of domestic political importance.

This only changed when restricting and controlling migration—especially the phenomenon dubbed ‘transit migration’—became a pressing policy issue for the European Union. With its encouragement, Mo-

rocco set in place new immigration legislation that included clearly defined sanctions against trafficking, smuggling, and irregular stay. It also began to enforce these rules with increasing vigour. It was only after mobility became criminalised that irregular migrants in Morocco began to live lives of ‘forced immobility’—the opposite of being ‘in transit’.

The long duration of their stay and their undocumented status combine to facilitate situations of extreme exploitation in the labour market. Construction, domestic work, begging, and wage labour in the informal sector—often in slave-like conditions—are virtually the only earning opportunities available in the current economic system. Sub-Saharan migrants also face racial discrimination along with social, economic, political, and cultural marginalisation. This leaves many migrants to exist in a state of limbo, unable either to move further or to return back home.

In European reporting, the Mediterranean crossing constitutes the last and most perilous leg of a linear journey. Sub-Saharan migrants were driven into this undertaking by false promises of riches and the deceptive reassurances of wicked ‘smugglers’ or ‘traffickers’. This is very rarely, if ever, the truth. The decision to board a boat for an extremely dangerous trip is often taken after years suspended in an indeterminate condition characterised by abuse, exploitation, and rightlessness.

For some, their criminalisation as ‘illegal migrants’ so severely restricts their employment options that they simultaneously attempt to leave Morocco and make money by organising boat trips for others. This transforms them, in the eyes of the European Union, into the ‘smugglers’ and ‘traffickers’ we hear so much about. Their fellow migrants, however, rarely perceive them as ‘monsters’. On the contrary, they are often greatly esteemed because they offer the hope of escape from forced immobility.



Every year in spring, when the sea is calm, irregular migrants in Morocco attempt to fulfil the dream of escaping the futureless limbo in which they are stuck. This limbo, and the exploitation and abuse with which it is associated, is the product of Morocco's current migration policy. This policy was developed in direct collaboration with the European Union as part of its 'Global Approach to Migration', a framework that the EU has promoted with greater or lesser success in many African countries. Unfortunately, this part of the story is rarely in the news. Hand-wringing in Europe over forced migration and the death of migrants at sea aside, it is clear that the fate of those forced into immobility largely remains a matter of policy and moral indifference.

## Criminalising traffickers is an alibi for state-produced vulnerability

*The US State Department argues that imprisoning human traffickers protects vulnerable farmworkers, but misses the fact that migrant worker vulnerability stems from the precarious conditions the state itself creates.*

Lyndsey P. Beutin

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The National Underground Railroad Freedom Center in Cincinnati, Ohio unveiled a new exhibition in 2010 titled *Invisible: Slavery Today*, in the hopes that it would make the history of nineteenth-century abolitionism more relevant to today's visitors. The exhibit, designed in collaboration with several prominent anti-trafficking advocacy organisations, depicts five types of trafficking victims. One of these is 'Mariano', an undocumented farmworker who was smuggled into the United States from Guatemala on the promise of a job and a better life. A critical reading of 'Mariano's story' reveals the ways in which punitive, carceral solutions are framed as 'abolition', as well as how US Government and US State Department narratives are reinforced by non-profit advocacy organisations and museums.

Migrant farm labour has increasingly become part of the narrative of how and where trafficking happens in the United States. Mariano's character is partially drawn from the work of the Coalition of Immokalee Workers (CIW), a farmworker-led, grassroots organisation that has successfully brought [lawsuits](#) against growers on enslavement charges. CIW is one of the few farmworker organisations that has adopted the language of 'modern day slavery' to describe the most extreme cases of brutality against migrants. Official acknowledgement of such abuse constitutes an important note of self-critique amid the State Department's largely coercive pursuits to criminalise trafficking in other countries. Yet, the dynamics of labour trafficking [remain represented in a good \(the state\) versus evil \(individual traffickers\) dramatic frame.](#)

This emphasises the violence inflicted on individual migrants by individual smugglers. It also downplays state violence and state responsibility for the basic conditions inhabited by both sets of precarious individuals. This opens up rhetorical space to paradoxically rely on immigration, police, defence, and state department officials to ‘rescue’ undocumented workers from the dangers the state itself creates.

### **Mariano’s story**

Mariano is introduced to visitors as a migrant agriculture labourer who works long hours in poor conditions. According to the exhibition panel, Mariano is in this situation because of the lack of jobs in his home country:

Migrant labourers, like Mariano, are especially vulnerable to becoming enslaved. Desperate for work, they pay to be smuggled into countries where jobs are available. Employers can exploit these labourers by stealing their pay, coercing long hours of work, and keeping them in squalid conditions.

This introduction to the plight of migrant farmworkers has the potential to very accurately unravel the structural conditions that make these sentences true. Agriculturalists in Mexico and Central America have been particularly desperate for jobs since the North American Free Trade Agreement (NAFTA) gutted national seed and fertilizer subsidies to small, cooperative, and subsistence farmers in Mexico. That same treaty did not ban domestic subsidies to American growers, which allows them to continue to sell their product on the “free” market below the cost of production. Unable to compete, Mexican farmers cross the border in search of jobs. The United States facilitates this border crossing with the H-2A visa programme for temporary agricultural labourers. Workers under this programme are granted limited protections and must remain with their sponsoring farm, while sponsors must provide housing for the workers.

There are, of course, many more men and women in need of work than there are H-2A visas or sponsoring farms. In addition, the limitations built into the H-2A visa make the programme extremely undesirable for many migrants. These factors, combined with the fact that there are few—if any—legal ways for lower class Mexicans and Central Americans to obtain permanent residence and citizenship in the United States, compel the majority of such individuals to cross without temporary status or other types of documentation.

The narrative told in the National Underground Railroad Freedom Center's exhibition, however, does not go into the history and effects of American economic policy, free trade programmes, and tiered immigration laws. Instead of examining these enduring structures, which were engineered by the United States and which maintain migrants' vulnerabilities, it individualises Mariano's story and re-casts the state as the hero-protector. The panel reads:

Mariano told his story to investigators. Cesar [his trafficker] was arrested, convicted, and sentenced to 12 years in prison. Mariano received a temporary visa for his testimony against Cesar. He still picks tomatoes but he is no longer a SLAVE.

The state investigators are figured as benevolent protectors, even though undocumented workers are actually extremely vulnerable to police coercion and intimidation due to their status. As Alicia Peters demonstrates in *Responding to Human Trafficking: Sex, Gender, and Culture in the Law*, they very rarely receive documentation-based protections from the state in return for their testimony. The crime of smuggling is represented as an evil choice by bad people that can be eradicated through punishment. Incarceration is held up as a natural resolution to socioeconomic problems, which have in fact been created by the state.

### Selective condemnation naturalises everyday violence

Cesar's arrest does nothing to keep Mariano safe in the fields or more financially secure in his home country. The panel suggests that the state cares for Mariano by providing him with a legal status, which one would think prevents him from being exploited by employers without redress. However, the legal working conditions for H-2A workers are abysmal and even the low standards often go unenforced.

For instance, the Fair Labor Standards Act (FLSA) [excludes all farm-workers from overtime pay regardless of hours worked, and its federal minimum wage provisions are rampantly ignored by growers without consequence](#). How, then, does a temporary visa and an incarcerated perpetrator release Mariano from his enslavement? He is still subject to the structures that create his conditions. As a tomato-picker in the United States, he remains vulnerable to terrible working conditions, and is either lowly-paid or not paid at all. Why is one condition rendered as slavery and the other not?

By suggesting that only the most extreme forms of smuggling are the problem, the everyday exploitation of migrant farm work becomes naturalised. Emphasising the violence of smuggling as perpetrated by individuals obscures state-sanctioned and state-inflicted violence. A panel describes Mariano's "escape":

The work was brutal and exhausting. Anything that prevented Mariano from working resulted in beatings, knife slashing, or chain shackles. Worst of all was the isolation: no family or friends knew where he was. One day in 2007, Mariano was locked inside his home, a truck. Seeing a hole in the roof, he punched until it was big enough to wriggle through and then *escaped*.

In this rendering, physical confinement and physical abuse are the problems. The evil acts of the smuggler are the barriers to freedom,

which is defined as the return of mobility and the absence of immediate physical abuse. Structural freedom remains unaddressed: neither the freedom to cross borders safely and legally nor the freedom to be safe after “escape” are problematised. Turning structural violence and exclusion into the sadistic tendencies of a villain becomes the state’s ultimate alibi. Even though the state creates the conditions necessary for precarious and exploitable migrant labour, the discourse of enslavement allows the state to present its carceral solutions—putting ‘bad’ people in prison—as ‘abolition.’ The invisibility of the role of state violence is aided by sensationalist representations of interpersonal violence in the museum’s exhibit.

In representing Mariano’s story as such, the museum’s curators and their non-profit collaborators support the state’s approach to ‘ending’ trafficking, which does nothing to protect labourers but does legitimise the growing carceral logic of the United States government. By extension, the museum obscures the realities of present-day labour exploitation and perpetuates the alibi of the state. In doing so, it misses an opportunity to compare and contrast the chattel slavery of previous centuries—a historic form of agricultural subsidy—with more contemporary ways to maximise agricultural profits for owners of capital.





## Section four

A future beyond bordering?



## Ferries not Frontex! 10 points to end the deaths of migrants at sea

*The EU response to the increasing number of migrant deaths in the Mediterranean Sea is riddled with falsity. Activists in touch with many of those attempting to cross respond.*

### The Alarm Phone

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*On April 20 2015, the Joint Foreign and Home Affairs Council of the EU released a ten-point action plan outlining their response to the recent deaths of migrants in the Mediterranean Sea. Many other proposals have also been made over the last few days. We are activists who have been involved in the struggles against the European border regime for several years and who have been in touch on a daily basis with hundreds of people who have crossed the Mediterranean through Watch The Med and the Alarm Phone project. Faced with the hypocrisy of the “solutions” that have been proposed so far, we feel compelled to undermine their falsity and attempt to open up an alternative space for reflection and action.*

1. We are shocked and angered at the recent tragedies that have claimed at least 1,200 lives in the Mediterranean Sea in the last week. We are shocked, although not surprised, by the unprecedented number of deaths in merely a few days. We are angered because we know that without a radical change these are just the first of many more deaths to come in 2015.
2. We are also angered because we know that what is proposed to us as a “solution” to this unbearable situation only amounts to more of the same: violence and death. The EU has called for the reinforcement of Frontex’ Triton mission. Frontex is a migration deterrence agency and Triton has been created with the clear mandate to protect borders, not to save lives.

3. However, even if saving lives was to be its core task, as it was the case for the military-humanitarian operation *mare nostrum* in 2014, it is clear that this would not bring dying at sea to an end. Those who suggest a European *mare nostrum* should be reminded that even during its mission, the most grandiose rescue operation in the Mediterranean to date, more than 3,400 people died. Is this figure acceptable to the European public?
4. Others have called for an international military operation in Libya, a naval blockade, or the further enlisting of African countries for the policing of their own land borders. The history of the last twenty years in the Mediterranean shows that stepping up the militarisation of migration routes is only going to cause more death. Each and every time a route into Europe has been blocked by new surveillance technologies and increasing policing, migrants have not stopped arriving. They have simply been forced to take longer and more dangerous routes. The recent deaths in the Central and Eastern Mediterranean are the result of the militarisation of the Gibraltar Strait, of the Canary Islands, of the land border between Greece and Turkey, and of several land borders in the Sahara. The “successes” of Frontex mean death to thousands of people.
5. International organisations as well politicians from across the whole political spectrum have denounced smugglers as the main cause of death in the Mediterranean Sea. Several prominent politicians have compared the smuggling of migrants to the transatlantic slave trade. There seems no limit to hypocrisy: those who uphold the slave regime condemning the slave traders! We know very well that smugglers operating in the context of the Libyan civil war are often ruthless criminals. But we also know that the only reason why migrants have to resort to them is the European border regime. Smuggling networks would be history in no time if those who now die at sea could instead reach Europe legally.

The visa regime that prevents them from doing so was introduced only 25 years ago.

6. Those who have called, once again, for the creation of asylum processing centres in Northern Africa should be reminded of two examples that are the most accurate examples of what these centres would actually mean. First, the Tunisian Choucha camp managed by the UNHCR, which abandoned those who sought refuge there from the Libyan conflict. Even those who were recognised as needing international protections were left behind in the Tunisian desert, often without any other choice than trying to cross the sea. Second, the creation by Australia of offshore processing centres on remote “prison-islands”, which is now hailed by many as a role model for Europe, only shows how hideous the forceful confinement of asylum seekers can be. These “solutions” serve only to displace the violence of the European border regime away from the eyes of Western publics.
7. Faced with this situation, what is to be done? Comrades and friends with whom we have shared common struggles in the past years have been calling for freedom of movement as the only viable response to this situation. We too make this demand ours, as it is the only one that has managed to open up a space of political imagination in an otherwise suffocating debate. Only unconditional legal access to the EU can end the death of migrants at sea. And yet we think that a general call for the freedom of movement is not enough in the current context. We want to consider the freedom of movement not as a distant utopia but as a practice—enacted by migrants on a daily basis often at the cost of their lives—that should guide our political struggles.
8. These are the reasons why we call for the institution of a humanitarian ferry, that should travel to Libya and evacuate as many people as possible. These people should be brought to Europe

and granted unconditional protection in Europe, without undergoing an asylum process which has lost its original purpose to protect and has *de facto* become yet another tool of exclusion.

9. Is the idea of a ferry unrealistic? In 2011, at the height of the Libyan civil war, humanitarian ferries evacuated thousands of stranded migrants from Misrata to Bengasi, overcoming obstacles such as shelling, constant fire, and sea mines. This shows that even in the current volatile situation of Libya, considering such an action is possible. Moreover, ferries would certainly be immensely cheaper than the prospect of a massive rescue mission at sea and of any military solution.
10. The only reality we know is that any solution short of this will continue to lead to more deaths at sea. We know that no process of externalisation of asylum procedures and border control, no amount of compliance with the legal obligations to rescue, no increase in surveillance and militarisation will stop the mass dying at sea. In the immediate term, all we need is legal access and ferries. Will the EU and international agencies be ready to take these steps, or will civil society have to do it for them?

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Originally published by *The Alarm Phone*.

## The case for open borders

*The discretionary control that states exercise over immigration is unjust. People should be free to cross borders and live wherever they choose.*

Joseph H. Carens

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Borders have guards and the guards have guns. This is an obvious fact of political life but one that is easily hidden from view—at least from the view of those of us who are citizens of affluent democracies. If we see the guards at all, we find them reassuring because we think of them as there to protect us rather than to keep us out. To Africans in small, leaky vessels seeking to avoid patrol boats while they cross the Mediterranean to southern Europe, or to Mexicans willing to risk death from heat and exposure in the Arizona desert to evade the fences and border patrols, it is quite different. To these people, the borders, guards, and guns are all too apparent, their goal of exclusion all too real. What justifies the use of force against such people? Perhaps borders and guards can be justified as a way of keeping out terrorists, armed invaders, or criminals. But most of those trying to get in are not like that. They are ordinary, peaceful people, seeking only the opportunity to build decent, secure lives for themselves and their families. On what moral grounds can we deny entry to these sorts of people? What gives anyone the right to point guns at *them*?

To many people the answer to this question will seem obvious. The power to admit or exclude non-citizens is inherent in sovereignty and essential for any political community that seeks to exercise self-determination. Every state has the legal and moral right to exercise control over admissions in pursuit of its own national interest and the common good of the members of its community, even if that means denying entry to peaceful, needy foreigners. States may choose to be generous in admitting immigrants, but, in most cases at least, they are under no moral obligation to do so.



[Strep72 /Flickr. Creative Commons.](#)

I want to challenge that view. In principle, borders should generally be open and people should normally be free to leave their country of origin and settle wherever they choose. This critique of exclusion has particular force with respect to restrictions on movement from developing states to Europe and North America, but it applies generally.

In many ways, citizenship in western democracies is the modern equivalent of feudal class privilege—an inherited status that greatly enhances one's life chances. To be born a citizen of a rich state in Europe or North America is like being born into the nobility (even though many of us belong to the lesser nobility). To be born a citizen of a poor country in Asia or Africa is like being born into the peasantry in the Middle Ages (even if there are a few rich peasants and some peasants manage to gain entry to the nobility). Like feudal birthright privileges, contemporary social arrangements not only grant great advantages on the basis of birth but also entrench these advantages by legally restricting mobility, making it extremely difficult for those born into a socially disadvantaged position to overcome that disadvantage, no matter how talented they are or how hard they work. Like feudal practices, these

contemporary social arrangements are hard to justify when one thinks about them closely.

Reformers in the late Middle Ages objected to the way feudalism restricted freedom, including the freedom of individuals to move from one place to another in search of a better life—a constraint that was crucial to the maintenance of the feudal system. Modern practices of state control over borders tie people to the land of their birth almost as effectively. Limiting entry to rich democratic states is a mechanism for protecting a birthright privilege. If the feudal practices protecting birthright privileges were wrong, what justifies the modern ones?

### The case for open borders

The analogy I have just drawn with feudalism is designed to give readers pause about the conventional view that restrictions on immigration by democratic states are normally justified. Now let me outline the positive case for open borders. I start from three basic interrelated assumptions. First, there is no natural social order. The institutions and practices that govern human beings are ones that human beings have created and can change, at least in principle. Second, in evaluating the moral status of alternative forms of political and social organisation, we must start from the premise that all human beings are of equal moral worth. Third, restrictions on the freedom of human beings require a moral justification. These three assumptions are not just my views. They undergird the claim to moral legitimacy of every contemporary democratic regime.

The assumption that all human beings are of equal moral worth does not mean that no legal distinctions can be drawn among different groups of people, nor does the requirement that restrictions on freedom be justified mean that coercion is never defensible. But these two assumptions, together with the assumption that the social order is not naturally given, mean that we have to give reasons for our institutions and practices and that those reasons must take a certain form. It is

never enough to justify a set of social arrangements governing human beings by saying that these arrangements are good for us, whoever the 'us' may be, without regard for others. We have to appeal to principles and arguments that take everyone's interests into account or that explain why the social arrangements are reasonable and fair to everyone who is subject to them.

Given these three assumptions there is at least a *prima facie* case that borders should be open, for, again, three interrelated reasons. First, state control over immigration limits freedom of movement. The right to go where you want is an important human freedom in itself. It is precisely this freedom, and all that this freedom makes possible, that is taken away by imprisonment. Freedom of movement is also a prerequisite to many other freedoms. If people are to be free to live their lives as they choose, so long as this does not interfere with the legitimate claims of others, they have to be free to move where they want. Thus freedom of movement contributes to individual autonomy both directly and indirectly. Open borders would enhance this freedom.

Of course, freedom of movement cannot be an unqualified right, if only for reasons like traffic control and other requirements of public order. But restrictions require a moral justification, i.e., some argument as to why the restriction is in the interest of, and fair to, all those who are subject to it. Since state control over immigration restricts human freedom of movement, it requires a justification. This justification must take into account the interests of those excluded as well as the interests of those already inside. It must make the case that the restrictions on immigration are fair to all human beings. There are restrictions on border crossing that meet this standard of justification (e.g. limiting the entry of terrorists and invading armies), but granting states discretionary control over immigration does not.

The second reason why borders should normally be open is that freedom of movement is essential for equality of opportunity. Within dem-



ocratic states we all recognise, at least in principle, that access to social positions should be determined by an individual's actual talents and effort, and not on the basis of birth-related characteristics such as class, race, or gender that are not relevant to the capacity to perform well in the position. This ideal of equal opportunity is intimately linked to the view that all human beings are of equal moral worth, that there are no natural hierarchies of birth that entitle people to advantageous social positions. But you have to be able to move to where the opportunities are in order to take advantage of them. So, freedom of movement is an essential prerequisite for equality of opportunity.

It is in the linkage between freedom of movement and equality of opportunity that the analogy with feudalism cuts most deeply. Under feudalism, there was no commitment to equal opportunity. The social circumstances of one's birth largely determined one's opportunities, and restrictions on freedom of movement were an essential element in maintaining the limitations on the opportunities of those with talent and motivation but the wrong class background (gender was another pervasive constraint). In the modern world, we have created a social order in which there is a commitment to equality of opportunity for people *within* democratic states (at least to some extent), but no pretence of, or even aspiration to, equality of opportunity for people *across* states. Because of the state's discretionary control over immigration, the opportunities for people in one state are simply closed to those from another (for the most part). Since the range of opportunities varies so greatly among states, this means that in our world, as in feudalism, the social circumstances of one's birth largely determine one's opportunities. It also means that restrictions on freedom of movement are an essential element in maintaining this arrangement, i.e., in limiting the opportunities of people with talents and motivations but the wrong social circumstances of birth. Again, the challenge for those who would defend restrictions on immigration is to justify the resulting inequalities of opportunity. That is hard to do.

A third, closely related point is that a commitment to equal moral worth entails some commitment to economic, social, and political equality, partly as a means of realising equal freedom and equal opportunity and partly as a desirable end in itself. Freedom of movement would contribute to a reduction of existing political, social, and economic inequalities. There are millions of people in poor states today who long for the freedom and economic opportunity they could find in Europe or North America. Many of them take great risks to come. If the borders were open, millions more would move. The exclusion of so many poor and desperate people seems hard to justify from a perspective that takes seriously the claims of all individuals as free and equal moral persons.

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This essay is a slight adaptation of the opening pages of chapter 11 in my book *The Ethics of Immigration* (Oxford University Press, 2013), which was in turn largely drawn from an earlier essay: "Aliens and Citizens: the Case for Open Borders," *Review of Politics* Vol. 49, No. 2 (Spring): 251-273.

## Thinking about open borders

*The free movement of people across international borders is a taboo in international political debates, making a thorough and much-needed rethinking of migration politics impossible. This must change.*

Antoine Pécoud

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The free movement of people across state borders is a taboo in international political debates. Borders, it is often argued, would play a decreasing role in a globalising world. And indeed, there is strong support for the free circulation of goods, capitals, services, and information. But, when it comes to people this no longer applies. The idea that human beings could be free to move from one state to another, choosing where they want to live, is usually dismissed as unrealistic. The unchallenged assumption is that peoples' access to countries other than their own should be carefully monitored and controlled.

Opening state borders to human migration would certainly be no easy scenario. It would constitute a complete upheaval in the world's organisation and raise more than a few fundamental questions. But does this prevent us from at least thinking about this scenario? Many of today's realities used to be deemed 'unrealistic', from the abolition of slavery to gender equality. Yet, even those who are deeply dissatisfied with today's world rarely consider this particular scenario. The United Nations repeatedly calls for many goals that are hardly 'realistic'—world peace, ending poverty, and so on—but never mentions open borders. The same could be said of NGOs. Most of them, even those that are actively engaged in the promotion of migrants' rights, take migration control for granted. In other words, many objectives exist that are extraordinarily difficult to achieve yet are never rejected as illegitimate. The free movement of people is not one of them.

When it comes to human mobility, the objective is almost always to

move towards greater *immobility*. Except for the wealthiest parts of the global population, people may only move for specific and well-defined reasons (asylum, family reunification, labor market shortages in receiving countries, etc.), and only under the close supervision of governments or employers. Development efforts, for example, regularly aim at enabling (or forcing?) the inhabitants of less-developed regions to stay there. Even when people move, the implicit goal for both sending and receiving states is that they eventually return. Thus, so-called ‘counter-trafficking’ measures strive to return the ‘victims’ of trafficking to their country, as if their vulnerability was only caused by their displacement. The same ‘there-is-no-place-like-home’ spirit characterises the treatment of refugees, pushed to go back to their region as soon as it has regained a minimum of security and stability. Economic migrants, too, are regularly expected to be ‘guestworkers’, remaining in and contributing to the ‘host’ country only as long as their presence is desired.

Perhaps because of this sedentary obsession, migration is perceived as a challenge in many parts of the world. Regardless of the evidence, migrants are understood as ‘problems’ and as a cause of insecurity, unemployment, welfare abuse, social disintegration, and so on. But nobody seems to know what the solution should look like. The only strategy seems to be to reinforce and strengthen, again and again, the different measures blocking mobility: technology (biometrics, ‘smart borders’); state cooperation (Frontex, readmission agreements, ‘migration and development partnerships’); and standard patterns of border control (fences, expulsions). Given the longstanding failure of these efforts to prevent all informal entry, the only question that remains is whether these are genuine but naïve attempts to stop people, or more cynical tools to increase migrants’ vulnerability and therefore their exploitability.

It is high time, therefore, to stop thinking about how to keep people in their place, and to recognise the normality and legitimacy of

human mobility. The point is not to deny that migration raises certain problems. Rather, it is to suggest that these problems will not disappear simply if people stay at home. Moreover, the more states aim at stopping people, the more problematic and disturbing the ethical and political foundations of border control appear. In a world marked by sharp, increasing socioeconomic imbalances, how much longer will we be able to justify the position that living conditions should be a correlate of our countries of birth?

Citizens of the global north can move quite easily across the world, whereas their fellow human beings in the global south are much more restricted. Is this fair? In the same vein, why should skilled people, like engineers, doctors or businesspeople, have easier access to opportunities abroad than their 'unskilled' compatriots? Employers and companies benefit from the liberalisation of trade in a globalising economy, but workers do not enjoy the same mobility: is this merely a way to favor capital to the detriment of labor and, if so, should this be left uncontested? If all human beings were fortunate enough to live in reasonably wealthy countries, with acceptable living and working conditions, these questions would perhaps be irrelevant. But this is not the case, and the ugly realities of our world are becoming increasingly difficult to ignore.

Migrants themselves do not ignore these questions. Migration, and especially irregular migration, is often rooted in a kind of global justice framework: people go where they think they can make a better living and, usually, share the benefits with those left behind (e.g. through remittances). Border control may make migration more difficult, but it does not convince many migrants that moving without authorisation is really unacceptable—that they shouldn't try just because they were told no. Indeed, migrants' independent agency is arguably the single biggest obstacle to measures aimed at preventing irregular migration.

Of course, these arguments do not exhaust the issue. In particular, they

clash with another set of equally valid arguments, which pertain to the centrality of closeness for solidarity and justice. Welfare, for example, is often thought to imply a degree of national closure to be meaningful. The same applies to democracy and, in a broader fashion, to the sense of identity and cultural sameness that, according to some, makes collective life possible and desirable. From this perspective, open borders is a misleadingly attractive objective. By destroying the foundations of nation-states, free movement would actually reinforce the already strong tendency towards neoliberal individualism.

This is a well-known and much-discussed dilemma, to which there is no easy solution. It is fair to observe, however, that current efforts to stop migration do not appear to automatically translate into greater in-state solidarity. Rather, the discourse against immigration tends to be fundamentally biased and damaging to domestic solidarity, as it rages against irregular migration while discreetly tolerating the presence of irregular migrants and taking advantage of their disadvantaged status. This does nothing but reinforce internal divides and tensions inside societies, the worst possible scenario for anyone who does not benefit from migrants' under-protection.

Equally problematic, the entire basis for the discussion on immigration control rests on the fictitious idea that people 'naturally' stay at home. This is not only questionable from a historical and empirical standpoint, but more importantly it justifies and perpetuates a status quo that benefits neither migrants nor receiving societies. The first step for rethinking the politics of migration is therefore to challenge its most fundamental assumptions. In order to do this we must—at least—open the debate on the free movement of people.

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*The Beyond Trafficking and Slavery short course*

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**M**obility is and always has been an essential part of humanity's economic, social, cultural and political life. To be able to move freely is a good. Yet in our unjust world, it is also an unearned and unequally distributed privilege. This volume reflects on that privilege, and on the suffering that results when states restrict access to it. The articles included here will explode the spurious contemporary binary between 'smuggling' and 'trafficking', and will argue that anti-trafficking discourse hides more than it reveals. Most crucially, it hides how state restrictions on the freedom of movement are the true threat to human wellbeing. Open the borders!

"The articles published by BTS so far have provided a much needed criticism by academics and activists towards the usual sensationalistic and simplistic representation of human trafficking as 'bad people doing bad things to poor victims'...[They] offer solutions based on evidence and respect for human rights, rather than on the needs of white saviours to rescue damsels in distress."

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## Beyond Trafficking and Slavery

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